Yanab Sheikh @ Gagu vs State Of West Bengal on 13 December, 2012

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Bench: Madan B. Lokur, Swatanter Kumar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 905 OF 2009

Yanab Sheikh @ Gagu … Appellant

Versus

State of West Bengal … Respondent

J U D G M E N T

Swatanter Kumar, J.

1. The present appeal is directed against the judgment of the Calcutta High Court dated 21st November, 2006 in exercise of its criminal appellate jurisdiction vide which the High Court affirmed the judgment of conviction and the order of sentence passed by the Trial Court.

2. Before dealing with the rival contentions raised by the learned counsel appearing for the parties, it is necessary for the Court to notice the case of the prosecution in brief. On 19th December, 1984, amongst other villagers of village Lauria, Yamin PW8 and Mohammed Sadak Ali, PW1 hired a pump set of one Humayun Kabir, who was examined as PW7, for taking water from the pond known as Baro Lauria Pukur for irrigating their respective lands. PW8, Yamin and others drew water from the said pond. In the afternoon, when Mohammed Sadak Ali, PW1, and his brother, the deceased Samim Ali, went on the bank of the said tank for drawing water through the said pump, accused Yanab arrived there. He had an altercation with Mohammed Sadak Ali and Samim Ali which related

to drawing of water from the tank. Though, PW1 had assured Yanab that they would stop taking water from the Pukur within a short time, yet Yanab forcibly switched off the pump machine. This further aggravated their altercation and accused started abusing them. Thereafter, accused Yanab suddenly went running to his house and came back within a few minutes along with the other accused named Najrul. Yanab then threw a bomb aiming at Samim Ali which hit him on his chest and exploded. As a result thereof, Samim fell onto the ground, his clothes got burnt and he died instantaneously. It is also the case of the prosecution that Najrul had a cloth bag in his hand and Yanab took out the bomb from that cloth bag and threw the same towards Samim. Immediately after the incident, both the accused persons fled away. With the help of the villagers, Mohammed Sadak Ali took Samim to his house which was stated to be at a short distance from the bank of the tank. The information with regard to the incident was given to the Rampurhat Police Station through telephone. SI R.P. Biswas, PW14, along with SI Samit Chatterjee, PW15, arrived at village Lauria around 10.00 p.m. on 19th December, 1984. The telephonic information, on the basis of which the G.D. Entry No.708, Ex.7, was lodged was made by PW6 from a phone booth. After these officers arrived, PW1, Sadak Ali submitted a written complaint, Ex.1, addressed to the Officer Incharge of Rampurhat Police Station. SI, R.P.Biswas, then made an endorsement, Ex.1/1 and sent the same through Constable Sunil Dutta to Rampurhat Police Station for starting a case under Sections 148/149/324/326/302 of the Indian Penal Code (for short 'IPC') and 9(b)(ii) of the Indian Explosives Act. Ex.1 was received at the police station by SI B.Roy. Upon this, a formal FIR, Ex.1/3, was registered and the investigation was started by PW14. He prepared the Inquest Report, Ex.2, over the dead body of the deceased on identification of the same by his brother, PW2. The sketch map of the place of occurrence, Ex.8, was prepared. The pump set was seized vide seizure list Ex.5 and a Zimma Nama Ex.6 was prepared. PW14 also collected the post mortem report of the deceased from the Sub-Divisional Hospital, Rampurhat on 21st January, 1985. Because of transfer of PW14, the investigation of the case was taken up by SI, N.R. Biswas. Later on the investigation was also completed by PW15, S. Chatterjee, who had filed the charge sheet. The accused persons faced the trial for the above-mentioned offences before the Court of Sessions, which by a detailed judgment dated 18th September, 1992, held them guilty of the offences and punished the accused Yanab as follows:

> "I, therefore, hold and find accused Yanob not guilty to the charge under section 324 of the I.P.C. and he is acquitted of that charge.
>
> As regards the charge under section 9(b)(ii) of the I.E. Act there is no evidence that accused Nazrul had in his possession bombs which were explosives in nature without any license or permit and as such he is found not guilty to the said charge and is acquitted.
>
> My findings are that accused Yanob threw the bomb which exploded on the chest of Samim causing his instantaneous death and as such it must be held that Yanob was in possession of explosive substance without any license or permit.
>
> Exts. 9 and 9/1 the reports of the Deputy Controller of Explosives go to establish that the remnants of the exploded bomb that was seized by PW14 and sent to him by C.S.

witness NO.23 in sealed packets contained an explosive mixture of chlorate of potassium and sulphate of arsenic and such a bomb would be capable of endangering human life on explosion and it has been established from the evidence on record that it has not only endangered human life but brought a premature end of the life of a human being and as such I hold and find accused Yanob guilty to the charge under section 9(b) (ii) of the I.E. Act and he is convicted thereunder.

In the result the prosecution case succeeds in part. Accused Nazrul is found not guilty to both the charges brought against him and is acquitted under section 235(1) Cr.P.C.

Accused Yanob Sk is found guilty to the charge u/s 302 of the I.P.C. and under section 9(b)(ii) of the I.E. Act and is convicted under both the counts of charges. He is, however, found not guilty to the charge under section 324 I.P.C. and is acquitted of that charge.

Sd/- P.K. Ghosh, Addl. Sessions Judge, Birbhum at Rampurhat, 18th September, 1992.

Heard accused Yanob on the point of sentence. The accused refuses to say anything or to make any submission on the point of sentence. Since no lesser than imprisonment for life can be imposed in an offence under section 302 I.P.C., the accused Yanob Sk is sentenced to imprisonment for life for the conviction under section 302 I.P.C. No separate sentence is being passed for the conviction under Section 9(b)(ii) of the I.E. Act.

Let a copy of this judgment of conviction and sentence be supplied free of cost to the convict accused Yanob Sk. as early as possible.

Sd/- P.K. Ghosh, Addl. Sessions Judge, Birbhum at Rampurhat, 18th September, 1992."

3. Aggrieved from the above judgment, the convicted accused, Yanab Sheikh, preferred an appeal before the High Court which came to be dismissed vide the impugned judgment, giving rise to the present appeal. While raising a challenge to the impugned judgment, the learned counsel for the appellant contended:

1. Ex.1/3 is a second FIR of the occurrence. Ex.7, the G.D. Entry No. 708, lodged at 2105 hrs. on 19th December, 1984 at Police Station Rampurhat by PW6 is, in fact, the FIR. The second FIR, Ex.1/3, is neither permissible in law and in fact, is hit by the provisions of Section 162 of the Cr.P.C. (for short 'Code'). Thus, the entire case of the prosecution must fall to the ground.

2. The copy of the FIR was sent to the Court of SDJM after ten days of the date of occurrence and, therefore, is violative of Section 157(1) of the Code, on which account

the appellant would be entitled to a benefit.

3. The prosecution has not examined all the witnesses without specifying any reason. Therefore, adverse inference should be drawn against the prosecution. There are material discrepancies and variations in the statements of the witnesses. Even the injured witnesses were not examined. For these reasons, the case of the prosecution must fail.

4. The acquittal of Najrul by the Trial Court should necessarily result in acquittal of the present appellant as well, because without attributing and proving the role of Najrul, the appellant could not be held guilty of committing any offence.

5. Lastly, it is contended that the offence squarely falls under Section 304, Part II of the IPC inasmuch as it was a fight that took place all of a sudden and resulted in the death of the deceased. There was no pre-meditation or intent to murder the deceased.

4. To the contra, it is contended by the learned counsel appearing for the State that the accused was convicted on 18th September, 1992 in the present case. He was granted bail on 29th September, 1992 and was convicted for life in another case under Sections 302/34 IPC in Case No. 44/1993 by the High Court. PW1, PW5 and PW6 are the eye-witnesses to the occurrence and the prosecution has been able to prove its case beyond any reasonable doubt. The delay in lodging the report was primarily for the reason that the person had walked to the post office which was at quite a distance and then made a phone call to the police station. PW14 had come on the basis of the call made by PW6. Thus, there was neither unexplained delay in making the call nor in lodging the FIR. It is also the contention that Ex.7, the GD Entry is not an FIR but is a mere intimation without any details and, therefore, the provisions of Section 162 of the Code are not attracted in the present case.

5. First and foremost, we may examine the question whether FIR, Ex.1/3, can be treated by the Courts as the First Information Report and if so, what is the effect of Ex.7 in law, keeping in view the facts and circumstances of the present case. It is clearly established on record that the occurrence took place in the evening of 19th December, 1984. The occurrence was a result of an altercation and the abuses hurled at PW1 and the deceased by Yanab near the water tank. Immediately upon the altercation, the accused had ran to his house and returned along with Najrul and threw a bomb at the deceased. PW1, brother of the deceased, PW5, Basera Bibi, wife of the deceased and PW6 Abdus Sukur, cousin of the deceased are the eye-witnesses and they said that they had seen the appellant throwing a bomb upon the deceased and that the accused, Yanab, had taken the said bomb from the bag of Najrul.

6. After the incident, PW6 had gone to the Duni Gram Post Office and informed the police about the incident over the telephone. He informed the police that there had been a murder in the village and they should come. When the police arrived, he was in the village and he met the police at the house of the deceased Samim. This phone call was taken and the G.D. Entry was registered by PW14, SI R.P. Biswas.

7. According to PW14, on 19th December, 1984 at about the 0805 hours, he had received a telephonic information and noted the information in General Diary No. 708 and thereafter he had proceeded towards village Lauria along with PW15, SI S. Chaterjee. Ex.7 had been recorded by PW14 and he had received the written complaint by PW1, Sadek Ali, and the same was submitted to him after he had reached the village Lauria and was addressed to the Officer In-charge, Rampurath Police Station. This written complaint was Ex.1. The cumulative effect of the statements of PW1, PW6 and PW14 clearly indicate that Ex.7 was not the First Information Report of the incident. It gave no details of the commission of the crime as to who had committed the crime and how the occurrence took place. A First Information Report normally should give the basic essentials in relation to the commission of a cognizable offence upon which the Investigating Officer can immediately start his investigation in accordance with the provisions of Section 154, Chapter XII of the Code. In fact, it was only upon reaching the village Lauria that PW14 got particulars of the incident and even the names of the persons who had committed the crime. A written complaint with such basic details was given by PW1 under his signatures to the police officer, who then made endorsement as Ex.1/1 and registered the FIR as Ex.1/3. In these circumstances, we are unable to accept the contention that Ex.7 was, in fact and in law, the First Information Report and that Ex.1/3 was a second FIR for the same incident/occurrence which was not permissible and was opposed to the provisions of the Section 162 of the Code.

8. In the case of Manu Sharma v. State (NCT of Delhi) (2010) 6 SCC 1, a Bench of this Court took the view that cryptic telephone messages could not be treated as FIRs as their object is only to get the police to the scene of offence and not to register the FIR. The said intention can also be clearly culled out from the bare reading of Section 154 of the Code which states that the information if given orally should be reduced to writing, read over to the informant, signed by the informant and a copy of the same be given to him, free of cost. Similar view was also expressed by a Bench of this Court in the case of State of Andhra Pradesh v. V.V. Panduranga Rao (2009) 15 SCC 211, where the Court observed as under: -

> "10. Certain facts have been rightly noted by the High Court. Where the information is only one which required the police to move to the place of occurrence and as a matter of fact the detailed statement was recorded after going to the place of occurrence, the said statement is to be treated as FIR. But where some cryptic or anonymous oral message which did not in terms clearly specify a cognizable offence cannot be treated as FIR. The mere fact that the information was the first in point of time does not by itself clothe it with the character of FIR. The matter has to be considered in the background of Sections 154 and 162 of the Code of Criminal Procedure, 1973 (in short "the Code"). A cryptic telephonic message of a cognizable offence received by the police agency would not constitute an FIR."

9. Thus, the purpose of telephone call by PW6, when admittedly he gave no details, leading to the recording of Entry, Ex.7, would not constitute the First Information Report as contemplated under Section 154 of the Code. The reliance placed by the learned counsel appearing for the appellant upon the provisions of Section 162 of the Code, is thus, not well-founded. Even in the case of Ravishwar Manjhi & Ors. v. State of Jharkhand, (2008) 16 SCC 561, another Bench of this Court took the view

that "..we are not oblivious to the fact that a mere information received by a police officer without any details as regards the identity of the accused or the nature of the injuries caused to the victim, name of the culprits, may not be treated as FIR, but had the same been produced, the nature of the information received by the police officer would have been clear....."

10. On this principle of law, we have no hesitation in stating that the second FIR about the same occurrence between the same persons and with similarity of scope of investigation, cannot be registered and by applying the test of similarity, it may then be hit by the proviso to Section 162 of the Code.

11. In the case of Anju Chaudhary v. State of U.P. & Anr. [Criminal Appeal @ SLP(Crl.) No. 9475 of 2008 decided on the 6th December, 2012], this Court held :

> "13. Section 154 of the Code requires that every information relating to the commission of a cognizable offence, whether given orally or otherwise to the officer in-charge of a police station, has to be reduced into writing by or under the direction of such officer and shall be signed by the person giving such information. The substance thereof shall be entered in a book to be kept by such officer in such form as may be prescribed by the State Government in this behalf.
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> 14. A copy of the information so recorded under Section 154(1) has to be given to the informant free of cost. In the event of refusal to record such information, the complainant can take recourse to the remedy available to him under Section 154(3).

Thus, there is an obligation on the part of a police officer to register the information received by him of commission of a cognizable offence. The two-fold obligation upon such officer is that (a) he should receive such information and (b) record the same as prescribed. The language of the section imposes such imperative obligation upon the officer. An investigating officer, an officer-in-charge of a police station can be directed to conduct an investigation in the area under his jurisdiction by the order of a Magistrate under Section 156(3) of the Code who is competent to take cognizance under Section

190. Upon such order, the investigating officer shall conduct investigation in accordance with the provisions of Section 156 of the Code. The specified Magistrate, in terms of Section 190 of the Code, is entitled to take cognizance upon receiving a complaint of facts which constitute such offence; upon a police report of such facts; upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

15. On the plain construction of the language and scheme of Sections 154, 156 and 190 of the Code, it cannot be construed or suggested that there can be more than one FIR about an occurrence. However, the opening words of Section 154 suggest that every information relating to commission of a cognizable offence shall be reduced to writing by the officer in-charge of a Police Station. This implies that there has to be the first information report about an incident which constitutes a cognizable offence. The purpose of registering an FIR is to set the machinery of criminal

investigation into motion, which culminates with filing of the police report in terms of Section 173(2) of the Code. It will, thus, be appropriate to follow the settled principle that there cannot be two FIRs registered for the same offence. However, where the incident is separate; offences are similar or different, or even where the subsequent crime is of such magnitude that it does not fall within the ambit and scope of the FIR recorded first, then a second FIR could be registered. The most important aspect is to examine the inbuilt safeguards provided by the legislature in the very language of Section 154 of the Code. These safeguards can be safely deduced from the principle akin to doubt jeopardy, rule of fair investigation and further to prevent abuse of power by the investigating authority of the police. Therefore, second FIR for the same incident cannot be registered. Of course, the Investigating Agency has no determinative right. It is only a right to investigate in accordance with the provisions of the Code. The filing of report upon completion of investigation, either for cancellation or alleging commission of an offence, is a matter which once filed before the court of competent jurisdiction attains a kind of finality as far as police is concerned, may be in a given case, subject to the right of further investigation but wherever the investigation has been completed and a person is found to be prima facie guilty of committing an offence or otherwise, reexamination by the investigating agency on its own should not be permitted merely by registering another FIR with regard to the same offence. If such protection is not given to a suspect, then possibility of abuse of investigating powers by the Police cannot be ruled out. It is with this intention in mind that such interpretation should be given to Section 154 of the Code, as it would not only further the object of law but even that of just and fair investigation. More so, in the backdrop of the settled canons of criminal jurisprudence, re-investigation or de novo investigation is beyond the competence of not only the investigating agency but even that of the learned Magistrate. The courts have taken this view primarily for the reason that it would be opposed to the scheme of the Code and more particularly Section 167(2) of the Code. [Ref. Rita Nag v. State of West Bengal [(2009) 9 SCC 129] and Vinay Tyagi v. Irshad Ali @ Deepak & Ors. (SLP (Crl) No.9185-9186 of 2009 of the same date).

16. It has to be examined on the merits of each case whether a subsequently registered FIR is a second FIR about the same incident or offence or is based upon distinct and different facts and whether its scope of inquiry is entirely different or not. It will not be appropriate for the Court to lay down one straightjacket formula uniformly applicable to all cases. This will always be a mixed question of law and facts depending upon the merits of a given case. In the case of Ram Lal Narang v. State (Delhi Administration) [(1979) 2 SCC 322], the Court was concerned with the registration of a second FIR in relation to the same facts but constituting different offences and where ambit and scope of the investigation was entirely different. Firstly, an FIR was registered and even the charge-sheet filed was primarily concerned with the offence of conspiracy to cheat and misappropriation by the two accused. At that stage, the investigating agency was not aware of any conspiracy to send the pillars (case property) out of the country. It was also not known that some other accused persons were parties to the conspiracy to obtain possession of the pillars from the court, which subsequently surfaced in London. Earlier, it was only known to the Police that the pillars were stolen as the property within the meaning of Section 410 IPC and were in possession of the accused person (Narang brothers) in London. The Court declined to grant relief of discharge to the petitioner in that case where the contention raised was that entire investigation in the FIR subsequently instituted was illegal as the case on same facts was already pending before the courts

at Ambala and courts in Delhi were acting without jurisdiction. The fresh facts came to light and the scope of investigation broadened by the facts which came to be disclosed subsequently during the investigation of the first FIR. The comparison of the two FIRs has shown that the conspiracies were different. They were not identical and the subject matter was different. The Court observed that there was a statutory duty upon the Police to register every information relating to cognizable offence and the second FIR was not hit by the principle that it is impermissible to register a second FIR of the same offence. The Court held as under :

> "20.Anyone acquainted with the day-to-day working of the criminal courts will be alive to the practical necessity of the police possessing the power to make further investigation and submit a supplemental report. It is in the interests of both the prosecution and the defence that the police should have such power. It is easy to visualize a case where fresh material may come to light which would implicate persons not previously accused or absolve persons already accused. When it comes to the notice of the investigating agency that a person already accused of an offence has a good alibi, is it not the duty of that agency to investigate the genuineness of the plea of alibi and submit a report to the Magistrate? After all, the investigating agency has greater resources at its command than a private individual. Similarly, where the involvement of persons who are not already accused comes to the notice of the investigating agency, the investigating agency cannot keep quiet and refuse to investigate the fresh information. It is their duty to investigate and submit a report to the Magistrate upon the involvement of the other persons. In either case, it is for the Magistrate to decide upon his future course of action depending upon the stage at which the case is before him. If he has already taken cognizance of the offence, but has not proceeded with the enquiry or trial, he may direct the issue of process to persons freshly discovered to be involved and deal with all the accused in a single enquiry or trial. If the case of which he has previously taken cognizance has already proceeded to some extent, he may take fresh cognizance of the offence disclosed against the newly involved accused and proceed with the case as a separate case. What action a Magistrate is to take in accordance with the provisions of the CrPC in such situations is a matter best left to the discretion of the Magistrate. The criticism that a further investigation by the police would trench upon the proceeding before the court is really not of very great substance, since whatever the police may do, the final discretion in regard to further action is with the Magistrate. That the final word is with the Magistrate is sufficient safeguard against any excessive use or abuse of the power of the police to make further investigation. We should not, however, be understood to say that the police should ignore the pendency of a proceeding before a court and investigate every fresh fact that comes to light as if no cognizance had been taken by the Court of any offence. We think that in the interests of the independence of the magistracy and the judiciary, in the interests of the purity of the administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light.

> 21. As observed by us earlier, there was no provision in the CrPC, 1898 which, expressly or by necessary implication, barred the right of the police to further investigate after cognizance of the case had been taken by the Magistrate. Neither Section 173 nor Section 190 lead us to hold that the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence. Practice, convenience and preponderance of authority, permitted repeated investigations on discovery of fresh facts. In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of the 1898 Code, the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation, the police could express their regard and respect for the court by seeking its formal permission to make further investigation.
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> 22. As in the present case, occasions may arise when a second investigation started independently of the first may disclose a wide range of offences including those covered by the first investigation. Where the report of the second investigation is submitted to a Magistrate other than the Magistrate who has already taken cognizance of the first case, it is up to the prosecuting agency or the accused concerned to take necessary action by moving the appropriate superior court to have the two cases tried together. The Magistrates themselves may take action suo motu. In the present case, there is no problem since the earlier case has since been withdrawn by the prosecuting agency. It was submitted to us that the submission of a charge-sheet to the Delhi court and the withdrawal of the case in the Ambala court amounted to an abuse of the process of the court. We do not think that the prosecution acted with any oblique motive. In the charge-sheet filed in the Delhi court, it was expressly mentioned that Mehra was already facing trial in the Ambala Court and he was, therefore, not being sent for trial. In the application made to the Ambala Court under Section 494 CrPC, it was expressly mentioned that a case had been filed in the Delhi Court against Mehra and others and, therefore, it was not necessary to prosecute Mehra in the Ambala court. The Court granted its permission for the withdrawal of the case.

Though the investigating agency would have done better if it had informed the Ambala Magistrate and sought his formal permission for the second investigation, we are satisfied that the investigating agency did not act out of any malice. We are also satisfied that there has been no illegality. Both the appeals are, therefore, dismissed."

17. In the case of M. Krishna v. State of Karnataka [(1999) 3 SCC 247], this Court took the view that even where the article of charge was similar but for a different period, there was nothing in the Code to debar registration of the second FIR. The Court opined that the FIR was registered for an offence under Sections 13(1)(e) and 13(2) of the Prevention of Corruption Act related to the period 1.8.1978 to 1.4.1989 and the investigation culminated into filing of a report which was accepted by the Court. The second FIR and subsequent proceedings related to a later period which was 1st August, 1978 to

25th July, 1978 under similar charges. It was held that there was no provision which debar the filing of a subsequent FIR.

18. In the case of T.T. Antony v. State of Kerala [(2001) 6 SCC 181], the Court explained that an information given under sub-Section (1) of Section 154 of the Code is commonly known as the First Information Report (FIR). Though this term is not used in the Court, it is a very important document. The Court concluded that second FIR for the same offence or occurrence giving rise to one or more cognizable offences was not permissible. In this case, the Court discussed the judgments in Ram Lal Narang (supra) and M. Krishna (supra) in some detail, and while quashing the subsequent FIR held as under :

> "23. The right of the police to investigate into a cognizable offence is a statutory right over which the court does not possess any supervisory jurisdiction under CrPC. In Emperor v. Khwaja Nazir Ahmad the Privy Council spelt out the power of the investigation of the police, as follows:
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> "In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as Their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the court."
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> 24. This plenary power of the police to investigate a cognizable offence is, however, not unlimited. It is subject to certain well-recognised limitations. One of them, is pointed out by the Privy Council, thus:
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> "[I]f no cognizable offence is disclosed, and still more if no offence of any kind is disclosed, the police would have no authority to undertake an investigation...."
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> 25. Where the police transgresses its statutory power of investigation the High Court under Section 482 CrPC or Articles 226/227 of the Constitution and this Court in an appropriate case can interdict the investigation to prevent abuse of the process of the court or otherwise to secure the ends of justice.
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> XXX XXX XXX
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> 35. For the aforementioned reasons, the registration of the second FIR under Section 154 CrPC on the basis of the letter of the Director General of Police as Crime No. 268 of 1997 of Kuthuparamba Police Station is not valid and consequently the investigation made pursuant thereto is of no legal consequence, they are accordingly quashed. We hasten to add that this does not preclude the investigating agency from seeking leave of the Court in Crimes Nos. 353 and 354 of 1994 for making further investigations and filing a further report or reports under Section 173(8) CrPC before the competent Magistrate in the said cases. In this view of the matter, we are not

inclined to interfere with the judgment of the High Court under challenge insofar as it relates to quashing of Crime No. 268 of 1997 of Kuthuparamba Police Station against the ASP (R.A. Chandrasekhar); in all other aspects the impugned judgment of the High Court shall stand set aside."

19. The judgment of this Court in T.T. Antony (supra) came to be further explained and clarified by a three Judge Bench of this Court in the case of Upkar Singh v. Ved Prakash [(2004) 13 SCC 292], wherein the Court stated as under :

"17. It is clear from the words emphasised hereinabove in the above quotation, this Court in the case of T.T. Antony v. State of Kerala has not excluded the registration of a complaint in the nature of a counter-case from the purview of the Code. In our opinion, this Court in that case only held that any further complaint by the same complainant or others against the same accused, subsequent to the registration of a case, is prohibited under the Code because an investigation in this regard would have already started and further complaint against the same accused will amount to an improvement on the facts mentioned in the original complaint, hence will be prohibited under Section 162 of the Code. This prohibition noticed by this Court, in our opinion, does not apply to counter-complaint by the accused in the first complaint or on his behalf alleging a different version of the said incident.

18. This Court in Kari Choudhary v. Sita Devi discussing this aspect of law held:

"11. Learned counsel adopted an alternative contention that once the proceedings initiated under FIR No. 135 ended in a final report the police had no authority to register a second FIR and number it as FIR No. 208. Of course the legal position is that there cannot be two FIRs against the same accused in respect of the same case. But when there are rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation can be carried on under both of them by the same investigating agency. Even that apart, the report submitted to the court styling it as FIR No. 208 of 1998 need be considered as an information submitted to the court regarding the new discovery made by the police during investigation that persons not named in FIR No. 135 are the real culprits. To quash the said proceedings merely on the ground is, to say the least, too technical. The ultimate object of every investigation is to find out whether the offences alleged have been committed and, if so, who have committed it." (emphasis supplied) XXX XXX XXX

23. Be that as it may, if the law laid down by this Court in T.T. Antony case is to be accepted as holding that a second complaint in regard to the same incident filed as a counter-complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given hereinbelow i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the

> jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question, consequently he will be deprived of his legitimated right to bring the real accused to book. This cannot be the purport of the Code.
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> 24. We have already noticed that in T.T. Antony case this Court did not consider the legal right of an aggrieved person to file counterclaim, on the contrary from the observations found in the said judgment it clearly indicates that filing a counter-

complaint is permissible.

25. In the instant case, it is seen in regard to the incident which took place on 20-5-1995, the appellant and the first respondent herein have lodged separate complaints giving different versions but while the complaint of the respondent was registered by the police concerned, the complaint of the appellant was not so registered, hence on his prayer the learned Magistrate was justified in directing the police concerned to register a case and investigate the same and report back. In our opinion, both the learned Additional Sessions Judge and the High Court erred in coming to the conclusion that the same is hit by Section 161 or 162 of the Code which, in our considered opinion, has absolutely no bearing on the question involved. Section 161 or 162 of the Code does not refer to registration of a case, it only speaks of a statement to be recorded by the police in the course of the investigation and its evidentiary value."

20. Somewhat similar view was taken by a Bench of this Court in the case of Rameshchandra Nandlal Parikh v. State of Gujarat [(2006) 1 SCC 732], wherein the Court held that the subsequent FIRs cannot be prohibited on the ground that some other FIR has been filed against the petitioner in respect of other allegations filed against the petitioner.

21. This Court also had the occasion to deal with the situation where the first FIR was a cryptic one and later on, upon receipt of a proper information, another FIR came to be recorded which was a detailed one. In this case, the court took the view that no exception could be taken to the same being treated as an FIR. In the case of Vikram v. State of Maharashtra (2007) 12 SCC 332, the Court held that it was not impermissible in law to treat the subsequent information report as the First Information Report and act thereupon. In the case of Tapinder Singh v. State of Punjab [(1970) 2 SCC 113] also, this Court examined the question as to whether cryptic, anonymous and oral messages, which do not clearly specify the cognizable offence, can be treated as FIR, and answered the question in the negative.

22. In matters of complaints, the Court in the case of Shiv Shankar Singh v. State of Bihar (2012) 1 SCC 130 expressed the view that the law does not prohibit filing or entertaining of a second complaint even on the same facts, provided that the earlier complaint has been decided on the basis of insufficient material or has been passed without understanding the nature of the complaint or where the complete facts could not be placed before the court and the applicant came to know of certain facts after the disposal of the first complaint. The Court applied the test of full consideration of the complaints on merits. In paragraph 18, the Court held as under: -

> "18. Thus, it is evident that the law does not prohibit filing or entertaining of the second complaint even on the same facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the court or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour. However, the second complaint would not be maintainable wherein the earlier complaint has been disposed of on full consideration of the case of the complainant on merit."

23. The First Information Report is a very important document, besides that it sets the machinery of criminal law in motion. It is a very material document on which the entire case of the prosecution is built. Upon registration of FIR, beginning of investigation in a case, collection of evidence during investigation and formation of the final opinion is the sequence which results in filing of a report under Section 173 of the Code. The possibility that more than one piece of information is given to the police officer in charge of a police station, in respect of the same incident involving one or more than one cognizable offences, cannot be ruled out. Other materials and information given to or received otherwise by the investigating officer would be statements covered under Section 162 of the Code. The Court in order to examine the impact of one or more FIRs has to rationalise the facts and circumstances of each case and then apply the test of 'sameness' to find out whether both FIRs relate to the same incident and to the same occurrence, are in regard to incidents which are two or more parts of the same transaction or relate completely to two distinct occurrences. If the answer falls in the first category, the second FIR may be liable to be quashed. However, in case the contrary is proved, whether the version of the second FIR is different and they are in respect of two different incidents/crimes, the second FIR is permissible, This is the view expressed by this Court expressed in the case of Babu Babubhai v. State of Gujarat and Ors. [(2010) 12 SCC 254]. This judgment clearly spells out the distinction between two FIRs relating to the same incident and two FIRs relating to different incident or occurrences of the same incident etc.

24. To illustrate such a situation, one can give an example of the same group of people committing theft in a similar manner in different localities falling under different jurisdictions. Even if the incidents were committed in close proximity of time, there could be separate FIRs and institution of even one stating that a number of thefts had been committed, would not debar the registration of another FIR. Similarly, riots may break out because of the same event but in different areas and between different people. The registration of a primary FIR which triggered the riots would not debar registration of subsequent FIRs in different areas. However, to the contra, for the same event and offences against the same people, there cannot be a second FIR. This Court has consistently taken this view and even in the case of Chirra Shivraj v. State of Andhra Pradesh [(2010) 14 SCC 444], the Court took the view that there cannot be a second FIR in respect of same offence/event because whenever any further information is received by the investigating agency, it is always in furtherance of the First Information Report."

12. In light of the above settled principle, we are unable to accept that Ex.1/3 was a second FIR with regard to the same occurrence with similar details and was hit by Section 162 of the Code. On the contrary, Ex.7 was not a First Information Report upon its proper construction in law but was a

mere telephonic information inviting the police to the place of occurrence. Thus, we have no hesitation in rejecting this contention raised on behalf of the appellant.

13. Equally without merit is the contention that the case of the prosecution must fail as the copy of the FIR had been sent to the Court after ten days of the registration of the FIR. The learned counsel appearing for the appellant stated that the FIR was registered on 19th December, 1984 but was sent to the Court of the Magistrate on 29th December, 1984. He pointed out the Entry No.793/1984 in this regard. The said G.R. Entry is not the entry sending the First Information Report to the Court. The document shown by the learned counsel for the appellant is neither the copy of the FIR nor does it contain any acknowledgment of the Court. It is merely a note of the case proceedings as to what steps have been taken by the Investigating Officer and was signed by the Investigating Officer on 19th December, 1984 itself. The learned counsel appearing for the appellant has not pointed out any other document from the record which could substantiate this contention raised on behalf of the appellant. The argument is entirely misconceived and is not based on any record of the case and is thus, rejected.

14. The next contention raised on behalf of the appellant that we are to deal with is that the prosecution should have examined all witnesses without exception. The fact that the prosecution failed to examine PW8, PW9 and PW10 itself renders the prosecution story feeble. It is correct that in the present case, PW8, PW9 and PW10 were produced as witnesses before the Court. After recording their introductory part in the examination-in-chief, the prosecution gave up these witnesses as having been won over and tendered them for cross-examination. The Court in its order dated 3rd July, 1992 recorded this aspect and also mentioned that the witnesses have been cross-examined by the defence. In view of this position, it cannot be said that the defence of the accused has suffered any prejudice as a result of non-examination of these three witnesses.

15. It is interesting to note that PW8, Yamin in his cross-examination admitted that he was examined by the Investigating Officer and also that he had stated before the daroga babu (Investigation Officer) that on the date of the incident, since morning he was drawing water from Baro Lauria Pukur through a pump set taken on hire from Humayon Kabir, PW7. No further questions were put to this witness by the accused. Whatever he stated in his cross-examination, to some extent, supports the case of the prosecution. It proves that the incident occurred on that day, pump was taken on hire and people of the village during the day were drawing water from the Baro Lauria Pukur. It is, thus, clear that non-examination of these witnesses has neither prejudiced the case of the prosecution nor will it be of any serious advantage to the accused. For this purpose, reliance has been placed upon the judgment of this Court in the case of Masalti v. State of U.P. [AIR 1965 SC 202] where the Court held that it is undoubtedly the duty of the prosecution to lay before the Court all material evidence available which is necessary for unfolding its case.

16. In the case of Masalti (supra), the judgment relied upon by the learned counsel for the appellant, this Court while making it clear that duty lies upon the prosecution to examine all material witnesses clearly stated the situation where the witnesses may not be examined because they have been won over, terrorised and they may not speak the truth before the court. The court in paragraph 12 held as under:

> "12. In the present case, however, we are satisfied that there is no substance in the contention which Mr Sawhney seeks to raise before us. It is not unknown that where serious offences like the present are committed and a large number of accused persons are tried, attempts are made either to terrorise or win over prosecution witnesses, and if the prosecutor honestly and bona fide believes that some of his witnesses have been won over, it would be unreasonable to insist that he must tender such witnesses before the court. It is undoubtedly the duty of the prosecution to lay before the court all material evidence available to it which is necessary for unfolding its case; but it would be unsound to lay down as a general rule that every witness must be examined even though his evidence may not be very material or even if it is known that he has been won over or terrorised. In such a case, it is always open to the defence to examine such witnesses as their witnesses and the court can also call such witnesses in the box in the interest of justice under Section 540 CrPC. As we have already seen, the defence did not examine these witnesses and the Court, after due deliberation, refused to exercise its power under Section 540 CrPC. That is one aspect of the matter which we have to take into account."

17. Basruddin, admittedly was not produced before the Court. The defence also did not summon this witness. Even if for the sake of arguments, it is assumed that Basruddin, if produced would have spoken the truth, that necessarily does not imply that he would not have supported the case of the prosecution. Even if we give some advantage to the case of the defence, for the reason that this witness has not been produced, even then by virtue of the statement of three other witnesses, PW1, PW5 and PW6, attendant circumstances and the statement of PW14, the prosecution has been able to bring home the guilt of the accused.

18. We must notice at this stage that it is not always the quantity but the quality of the prosecution evidence that weighs with the Court in determining the guilt of the accused or otherwise. The prosecution is under the responsibility of bringing its case beyond reasonable doubt and cannot escape that responsibility. In order to prove its case beyond reasonable doubt, the evidence produced by the prosecution has to be qualitative and may not be quantitative in nature. In the case of Namdeo v. State of Maharashtra [(2007) 14 SCC 150], the Court held as under:

> "28. From the aforesaid discussion, it is clear that Indian legal system does not insist on plurality of witnesses. Neither the legislature (Section 134 of the Evidence Act, 1872) nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. The bald contention that no conviction can be recorded in case of a solitary eyewitness, therefore, has no force and must be negatived."

19. Similarly, in the case of Bipin Kumar Mondal v. State of West Bengal (2010) 12 SCC 91, this Court took the view, "..in fact, it is not the number and quantity but the quality that is material. The time- honoured principle is that evidence has to be weighed and not counted. The test is whether evidence has a ring of truth, is cogent, trustworthy and reliable."

20. Facts of the present case, seen in light of the above principles, makes it clear that the Court is primarily concerned and has to satisfy itself with regard to the evidence being reliable, trustworthy and of a definite evidentiary value in accordance with law. PW1, PW5 and PW6 have clearly supported the case of the prosecution. Their statements, examined in conjunction with the statement of PW11, the doctor and the Investigating Officer, PW14, clearly establish the case of the prosecution beyond any reasonable doubt.

21. Najrul has been acquitted by the Trial Court. His acquittal was not challenged by the State before the High Court. In other words, the acquittal of Najrul has attained finality. While recording the acquittal of the accused Najrul, the Trial Court recorded the following reasoning:

> "P.W.1 and PW-5 at the first blush did not say that accused Yanob threw the bomb at Samim taking the same from the bag of Nazrul and PW-1 stated that Yanob came along with Nazrul with bomb in his hand. He did not say that Nazrul was carrying any cloth bag (Tholey).
>
> It also transpired from the evidence of PW-5 that the house of Yanob is about 200/250 cubits away from the bank of the tank while that of Nazrul is at a further distance of 25/30 cubits from Yanob's house.
>
> It might be that Nazrul was in the house of Yanob or hearing shouts from the bank of the tank seeing Yanob rushing back towards the bank of the tank with bombs in his hand he came close behind him to see what was going on and at that point of time he might have a had a cloth bag in his hand but that itself will not prove that he shared the common intention with Yanob to kill Samim specially when no such cloth bag containing bombs were recovered from his possession.
>
> I, therefore, on an appreciation of the entire evidence on record feel no hesitation to hold and find accused Yanob guilty to the charge under section 302 I.P.C. and convict him thereunder and hold and find accused Nazrul not guilty to the charge under section 302 read with section 34 of the Indian Penal Code and he is acquitted of that charge under section 235(1) Cr.P.C. So far as the charge under section 324 I.P.C. against accused Yanob for causing voluntary hurt to Mahasin (PW-
>
> 9) and Basir (C.S. witness No. 10) is concerned there is no evidence that the aforesaid persons sustained and/or received any injury from the splinters of the exploded bomb thrown by accused Yanob. Nahasin when tendered by the prosecution even during cross examination did not say that he sustained any such injury. Basir as already observed had not been examined on the plea that he has been gained over

> and the defence did not examine him as its witness to prove that the prosecution narrative was not correct and the incident took place in a different manner.

I, therefore, hold and find accused Yanob not guilty to the charge under section 324 of the I.P.C. and he is acquitted of that charge."

22. In the present case, we are concerned with the merit or otherwise of the above reasoning leading to the acquittal of the accused Najrul. We are primarily concerned with the effect of this acquittal upon the case of the appellant-accused. The Trial Court in its judgment clearly stated that there was direct and circumstantial evidence against the accused implicating him with the commission of the crime. Finding the appellant guilty of the offence, the Trial Court punished him accordingly. Where the prosecution is able to establish the guilt of the accused by cogent, reliable and trustworthy evidence, mere acquittal of one accused would not automatically lead to acquittal of another accused. It is only where the entire case of the prosecution suffers from infirmities, discrepancies and where the prosecution is not able to establish its case, the acquittal of the co-accused would be of some relevancy for deciding the case of the other. In the case of Dalbir Singh v. State of Haryana [(2008) 11 SCC 425], this Court held as under:

> "13. Coming to the applicability of the principle of falsus in uno, falsus in omnibus, even if major portion of evidence is found to be deficient, residue is sufficient to prove guilt of an accused, notwithstanding acquittal of large number of other co-accused persons, his conviction can be maintained. However, where large number of other persons are accused, the court has to carefully screen the evidence:
>
> "51. ... It is the duty of court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim falsus in uno, falsus in omnibus has no application in India and the witnesses cannot be branded as liars. The maxim falsus in uno, falsus in omnibus (false in one thing, false in everything) has not received general acceptance in different jurisdiction in India, nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence'. (See Nisar Ali v. State of U.P.) Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate the accused who had been acquitted from those who were convicted. (See Gurcharan Singh v. State of Punjab.) The doctrine is a dangerous one, specially in India, for if a whole body of the testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be

> feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See Sohrab v. State of M.P.4 and Ugar Ahir v. State of Bihar.) An attempt has to be made to in terms of felicitous metaphor, separate grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is discard the evidence in toto. (See Zwinglee Ariel v. State of M.P. and Balaka Singh v. State of Punjab.) As observed by this Court in State of Rajasthan v. Kalki8 normal discrepancies in evidence are those which are due to normal errors of observations, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and these are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorised. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so."

23. The cumulative effect of the above discussion is that the acquittal of a co-accused per se is not sufficient to result in acquittal of the other accused. The Court has to screen the entire evidence and does not extend the threat of falsity to universal acquittal. The Court must examine the entire prosecution evidence in its correct perspective before it can conclude the effect of acquittal of one accused on the other in the facts and circumstances of a given case.

24. Neither we are able to see nor the counsel appearing for the appellant has been able to point out the contradictions or discrepancies of any material nature in the statements of the witnesses. PW6, cousin of the deceased has supported the prosecution version. His statement is duly corroborated by other witnesses. According to him he had gone to the Duni Gram Post Office and informed the police about the incident over telephone, in response to which PW14 had come to the place of occurrence. The incident took place at about 4.00 to 4.30 p.m. The telephonic information was given at about 9.00 p.m. and thereafter the FIR, Ex.1/3, was registered at about 10.00 p.m. The question of delay in lodging the FIR in the present case does not arise. Whatever time was taken in registering the FIR stands fully explained by the statements of PW6 and PW14.

25. Another very important aspect of the case is, that on behalf of the accused, no question or suggestions were put to the Investigating Officer on any of these aspects which are sought to be

raised before us in the present appeal. The Investigating Officer could have easily explained the delay, if any. No question was also directed to get an explanation on record as to why Basruddin was not examined and PW9 and PW10 without examination were tendered for cross-examination in Court. Absence of such questions on behalf of the accused to the concerned witnesses would show that the accused cannot claim any advantage and thus, cannot default the case of the prosecution in this regard, particularly in the facts of the present case.

26. For the reasons afore-stated, we find no merit in the present appeal. The same is dismissed accordingly.

.....J. [Swatanter Kumar] .....J. [Madan B. Lokur] New Delhi;

December 13, 2012