

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.265 of 2009

With

Criminal Appeal (DB) No. 367 of 2009

With

Criminal Appeal (DB) No. 381 of 2009

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(AGAINST THE JUDGMENT OF CONVICTION, DATED 25TH FEBRUARY, 2009, AND THE ORDER OF SENTENCE, DATED, 26TH FEBRUARY, 2009, PASSED BY SHRI SATISH CHANDRA SINHA, ADDITIONAL SESSIONS JUDGE, FAST TRACK COURT- I, BUXAR, IN SESSIONS TRIAL NO. 65 OF 2007, ARISING OUT OF RAJPUR POLICE STATION CASE NO. 20 OF 2006), CORRESPONDING TO G.R. NO.329 OF 2006).

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1. Rakesh Yadav, son of late Chhedi Yadav
2. Rama Shanker Rajbhar, son of late Kesho Rajbhar
Both residents of village Dehri, Kotha Dera, P.S. Rajpur, P.O. Dehri, District Buxar

.... Appellants (**In Criminal Appeal (DB) No. 265/2009**)

With

1. Santosh Kumar Gupta, son of Shyam Lal Gupta,
Resident of village Dehri, P.S. Rajpur,
District Buxar

.... Appellant (**In Criminal Appeal (DB) No. 367 of 2009**)

With

1. Rama Shankar Yadav, son of late Chhedi Yadav,
Resident of village Dehri, Kotha Dera,
P.O. Dehri, P.S. Rajpur, District Buxar

.... Appellant (**In Criminal Appeal (DB) No. 381 of 2009**)

VERSUS

The State of Bihar

.... Respondent (**In all the appeals**)

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Appearance :

(In CR. APP (DB) No. 265 and 381 of 2009)

For the Appellants: Mr. Baxi S.R.P.Sinha, Senior Advocate
Mr. Rahul Nath, Advocate

(In CR. APP (DB) No. 367 of 2009)

For the Appellant: Dr. Amrendra Kumar, Advocate

(In all the appeals)

For the Respondent: Mr. Sujit Kumar Singh, A.P.P.
Mr. Ajay Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

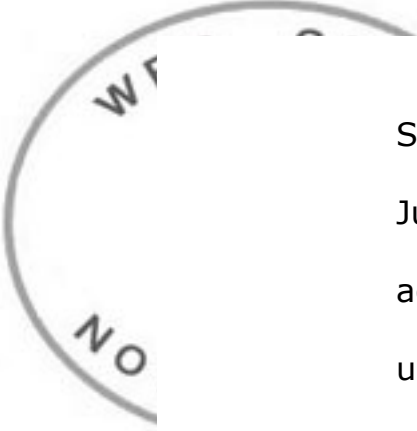
and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 22-04-2015



By the judgment, dated 25.02.2009, passed, in Sessions Trial No. 65 of 2007, learned Additional Sessions Judge, Fast Track Court No. I, Buxar, has, while convicting the accused-appellants, Rama Shankar Yadav and Santosh Gupta, under Section 302 of the Indian Penal Code, convicted the accused-appellants, Rakesh Yadav and Rama Shankar Rajbhar, under Section 302 read with 149 of the Indian Penal Code. By the judgment under appeal, learned Additional Sessions Judge, Fast Track Court No. I, Buxar, has not only convicted all the accused-appellants, under Section 148 of the Indian Penal Code, but also under Section 27 of the Arms Act, 1959. In consequence of their conviction under Section 302 *simplicitor* and Section 302 read with Section 149 of the Indian Penal Code, all the accused-appellants have been sentenced, under the order, dated 26.02.2009, to suffer imprisonment for life. For their conviction under Section 148 of the Indian Penal Code, while all the accused-appellants have been sentenced, under the order aforementioned, to undergo rigorous imprisonment for three years each, they have been, for their conviction under Section 27 of the Arms Act, 1959, further sentenced to undergo rigorous imprisonment for three years each. All the sentences have been directed to run concurrently.

2. The case of the prosecution, as unfolded by the First Information Report, lodged by Shailendra Kumar Kharwar (PW 3), may, in brief, be described as under:

(i) On 23.02.2006, at about 06.00 AM, when Rajendra Kharwar, on his way to attend the call of nature by taking a pot of water with him, reached the field of one Sachidanand Ray, accused persons, namely, Rama Shankar Yadav, Rakesh Yadav, Santosh Gupta and Rama Shankar Rajbhar, along with 4-5 unknown persons, came out of the nearby mustard field, where they were hiding and, while accused Rama Shankar Yadav caught hold of the right hand of Rajendra Kharwar, accused Rakesh Yadav caught hold of the left hand of Rajendra Kharwar and while the remaining accused, along with their associates, were pushing and dragging Rajendra Kharwar towards north-east direction, Rajendra Kharwar's son, Shailendra Kumar Kharwar (PW 3), was behind his father inasmuch as he (PW 3), too, was on his way, with a pot of water, to answer the call of nature.

(ii) Having seen his father being dragged by the accused, PW 3 raised alarm and also moved forward to save his father, but all the accused tried to catch hold of the informant (PW 3) and he (PW 3), out of fear, retreated. In the meanwhile, Anil Kumar Choubey (PW 2), Ram Pratap Rai (PW 4), Ramesh Rai (PW 5), Sanjeev @ Fantoos (PW 1), who is younger brother

of the informant (PW3), and their other co-villagers came there and preceded ahead raising *hulla*. At that point of time, while accused Rama Shankar Yadav fired from his rifle at Rajendra Kharwar, accused Santosh Kumar Gupta fired from his gun aiming at Rajendra Kharwar.

(iii) Because of the bullets so fired from the said fire-arms, Rajendra Kharwar sustained bullet injury on his left cheek, which was wound of entry, and right side of his scalp, which was wound of exit, and fell on the ground. On noticing the informant (PW 3) and others moving towards the assailants, accused Rakesh Yadav fired shots towards the direction of PW 3 and others and fled away from the place of occurrence and so fled away the remaining assailants.

(iv) After the assailants had left, PW 3, accompanied by his relatives and co-villagers, came rushing to the place of occurrence and found his father, Rajendra Kharwar, dead on having sustained bullet injuries.

(v) The motive, behind killing of Rajendra Kharwar, was that he had got treated accused Santosh Gupta at Balrampur hospital, Lucknow, where Rajendra Kharwar used to work; but accused Santosh Gupta was not satisfied with the treatment and demanded a sum of Rs. 25,000/- to be paid back to him by Rajendra Kharwar, the said amount having been spent by accused Santosh Gupta at Balrampur Hospital,

Lucknow, and he (accused Santosh Gupta) had threatened that if the said sum of Rs. 25,000/- was not paid, Rajendra Kharwar would have to face dire consequences.

(vi) On the very day of the occurrence, i.e., on 23.02.2006, at about 7.15 AM, while on patrolling duty, PW 7 (Anil Kumar Singh), a Sub-Inspector, In-charge, New Bhojpur Out-post, received information on his mobile phone that one Rajendra Kharwar had been shot dead at village Dehri Khotadera, whereupon PW 7 reached the place of occurrence at about 08.30 AM.

(vii) On arrival of the police, the informant (PW 3) orally reported the occurrence to the police, the information, so given by PW 3, was reduced into writing, in the form of his *fardbeyan*, by PW 7, and treating the said *fardbeyan* as the First Information Report, Rajpur Police Station Case No. 20 of 2006, under Sections 147/148/149/341/302 of the Indian Penal Code read with Section 27 of the Arms Act, 1959, was registered, against all the accused aforementioned.

(viii) During investigation, police held *inquest* over Rajendra Kharwar's dead body, which was also subjected to *post mortem examination*, and, on completion of investigation, while a *charge sheet* was laid, under Section 302 of the Indian Penal Code, against accused Rama Shanker Yadav and Santosh Gupta, a *charge sheet* was laid under Section

302/149/147/148 Indian Penal Code read with Section 27 of the Arms Act, 1959, against four accused persons, namely, Rama Shankar Yadav, Rakesh Yadav, Santosh Gupta and Rama Shankar Rajbhar.

3. At the trial, when charges, under Section 147, Section 302 read with Section 149 of the Indian Penal Code and Section 27 of the Arms Act, 1956, were framed against all the accused, they pleaded not guilty. An additional charge was framed, under Section 302 of the Indian Penal Code, against accused Rama Shankar Yadav and Santosh Gupta and to the charge so framed, too, accused Rama Shankar Yadav and accused Santosh Gupta pleaded not guilty.

4. In support of their case, prosecution examined altogether eight witnesses including the Investigation Officer. All the accused were, then, examined under Section 313(1)(b) of the Code of Criminal Procedure and, in their examinations aforementioned, they denied that they had committed the offences, which were alleged to have been committed by them, the case of the defence being that they had been implicated falsely in the case, because of previous animosity with the informant and his witnesses. In support of their case, the defence, too, adduced evidence by examining four witnesses.

5. Having, however, found the accused aforementioned guilty of the offences, learned trial Court

convicted them accordingly and passed sentences against them as has been indicated above.

6. Aggrieved by their conviction and the sentences passed against them, all the accused, as convicted persons, have preferred these three appeals.

7. While Criminal Appeal (DB) No. 265 of 2009 has been preferred by Rakesh Yadav and Rama Shankar Rajbhar, Criminal Appeal (DB) No. 367 of 2009 has been preferred by Santosh Kumar Gupta; whereas Criminal Appeal (DB) No. 381 of 2009 has been preferred by Rama Shankar Yadav.

8. As these three appeals have arisen out of the judgment of conviction, dated 25.02.2009, and order of sentence, dated 26.02.2009, passed, in Sessions Trial No. 65 of 2007, by learned Additional Sessions Judge, Fast Track Court No. I, Buxar, we propose to dispose of these three appeals by this common judgment and order.

9. We have heard Mr. Baxi S. R. P. Sinha, learned Senior Counsel, appearing for the appellants in Criminal Appeal (DB) Nos. 265 of 2009 and 381 of 2009, and Dr. Amrendra Kumar, learned counsel appearing for the appellant in Criminal Appeal (DB) 367 of 2009. We have also heard Mr. Sujit Kumar Singh, learned Additional Public Prosecutor, appearing on behalf of the State in Criminal Appeal (DB) Nos. 265 of 2009 and 381

of 2009 and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State in Criminal Appeal (DB) 367 of 2009.

10. While dealing with the present appeals, it may be noted, at the very outset, that Rajpur Police Station Case No. 50 of 1994 was registered for the death of Chhedi Yadav, father of accused-appellants, Rama Shankar Yadav and Rakesh Yadav. In the case aforementioned, PW 4 (Ram Pratap Ray) was an accused along with others and the accused-appellant, Rama Shankar, was one of the witnesses. This apart, Kanu @ Chandra Shekhar, brother of accused-appellants, Rama Shankar Yadav and Rakesh Yadav, was killed and in this regard, too, Rajpur Police Station Case No. 15 of 2003 was registered, wherein PW 4 (Ram Pratap Rai) and PW 5 (Ramesh Rai) were made accused and accused-appellants, Rama Shankar Yadav, Rakesh Yadav and Raj Kumar Rajbhar, were witnesses and the trial, arising out of Rajpur Police Station Case No. 15 of 2003, was still pending, when the appellants were made accused in the present case.

11. Moreover, the wife of PW 2 (Anil Kumar Choubey) was defeated, in the election held for the post of Mukhiya, by the sister-in-law of the accused-appellants, Rama Shankar Yadav and Rakesh Yadav. Further-more, Rajpur Police Station Case No. 97 of 2003 was registered against PW 5

(Ramesh Rai) for having allegedly made an attempt to cause death of accused-appellant, Santosh Kumar Gupta.

INIMICAL WITNESS

12. Noticeably, therefore, there was, admittedly, previous enmity between the parties concerned souring thereby their relationship. Consequently, both the litigating parties maintained inimical relation with each other. Enmity is a double-edged weapon, which cuts both the ways. While enmity may be a reason for committing an offence, such as, murder, enmity may also be a reason for either falsely implicating an enemy as an accused or roping in an enemy, who may be innocent, along with the guilty ones and, in such case, evidence has to be closely examined and cautiously approached.

13. Bearing in mind the principle of law governing appreciation of evidence of inimical witnesses, when we turn to the medical evidence on record, we notice that according to the doctor (PW 6), he conducted, on 23.02.2006, at 4.10 PM, *post mortem* examination on the dead body of Rajendra Kharwar and found as follows:

"On external examination:

(i) Lacerated wound on left cheek ½" round approximately margin inverted and burning round is present communicating with brain cavity (wound of entry).

(ii) Lacerated wound on right side cheek damaging right eye size 4" x 2 ½" communicating with brain cavity (wound of exit). Skull bone damaged.

(iii) Lacerated wound on the right side of scalp 1 ½" x ½" x communicating with brain cavity

inverted (exit wound).

(iv) Lacerated wound on the right side of face damaging right ear pinna and skull bone, size 2" x 1"x communicating with brain cavity, margin inverted and blackening round is present (wound of entry).

(v) Incised wound on right side of neck ¾" x ¼" x skin.

Internal examination :

Brain and maninges – blood filled in brain cavity, brain tissue damaged, skull bone fractured, lungs pale liver, spleen, kidney pale, heart empty, stomach digested liquid food material present in scanty, urinary bladder - scanty urine present."

14. According to the doctor (PW 6), due to mistake, size of injury No. (iii) was mentioned in place of size of injury No. (iv), and size of injury No. (iv) was mentioned in place of size of injury No.(iii). In the opinion of the doctor (PW 6), death was caused due to shock and haemorrhage resulting from *ante mortem* injuries caused by fire arm.

15. Neither the finding of the doctor nor his opinion, with regard to cause of death of the said deceased and/or his opinion with regard to the nature of weapon, which might have been used, for causing assault on, and death of, the said deceased, were disputed either by the prosecution or by the defence. This apart, we, too, do not notice anything inherently incorrect or improbable in the evidence given by the doctor (PW 6).

16. In the face of undisputed medical evidence on record, it becomes clear that Rajendra Kharwar's death was *homicidal* in nature.

17. The question, however, remains: whether the accused-appellants or any of them had caused the death of Rajendra Kharwar?

18. The question, posed above, brings us to the evidence of the informant (PW 3), who is son of deceased Rajendra Kharwar. According to the evidence of this witness (PW 3), on the day of the occurrence, at about 6.00 AM, while he (PW 3) was proceeding to answer the nature's call, his father, too, was going ahead of him with a pot of water in his hand to answer the nature's call and, on his way, when his father, Rajendra Kharwar, reached near the field of Sachidanand Rai, accused-appellants, Rama Shankar Yadav, Rama Shankar Yadav's brother, Rakesh Yadav, Santosh Gupta, Rama Shankar Rajbhar and some others were seen by PW 3 coming out of the nearby mustard field. PW 3 also saw accused-appellant, Rama Shankar Yadav, catching hold of the right hand of Rajendra Kharwar and accused-appellant, Rakesh Yadav, catching hold of the left hand, Rajendra Kharwar and the two accused-appellants aforementioned and their associates started pulling Rajendra Kharwar towards the field of Rambachan Singh.

19. On seeing what was happening, PW 3, according to what PW 3 has deposed, took a few steps back and raised *hulla*, but accused-appellant, Rakesh Yadav, fired from



his country-made pistol and he (PW 3) had to retreat. It is in the evidence of PW 3 that upon hearing *hulla* raised by him, PW 2 (Anil Choubey), Ram Pratap Ray (PW 4), Ramesh Ray (PW 5) and his (informant's) younger brother, Sanjeev @ Fantoos (PW 1), arrived there and, on seeing them coming, accused-appellant, Rama Shankar Yadav, fired from his rifle and the bullet hit the cheek of informant's father, Rajendra Kharwar, whereas Santosh Gupta fired from the gun, which hit the left thigh of the informant's father.

20. It also transpires from the evidence of PW 3 that having shot informant's father, the accused-appellants fled away and when the informant, along with other witnesses, arrived at the place of occurrence, he (PW 3) found his father lying dead. It is also in the evidence of the informant (PW 3) that the police arrived at the place of occurrence and recorded his *fardebayan*, which has been proved as Exhibit-1.

21. Broadly in tune with the above evidence of PW 3 describing the occurrence is the evidence given by PWs 1, 2, 4 and 5.

22. What is, now, important to note is that a police out-post stood, admittedly, situated barely at a distance of 100 yards from the place of occurrence. It has also surfaced from the evidence on the record that an Assistant Sub-Inspector of Police, along with some police personnel from Rajpur Police

Station, had come to the place of occurrence. There is, however, nothing in the evidence on record to show that the said police personnel were reported about the name of any assailants.

23. It has also surfaced from the evidence of PW 3 that about half-an-hour after the occurrence, the police from the local police station arrived; but there is nothing in the evidence on record to show that name of any assailants was disclosed to the police.

24. It was only when the Investigating Officer (PW7) reached the place of occurrence from Buxar at about 8.15 AM that he recorded the informant's *fardbeyan*, which has been treated as the First Information Report.

25. Even in the evidence of Investigating Officer (PW 7), what we notice is that according to him (PW 7), while he was on the law and order duty, he received a call, at 07.15 AM, on his mobile phone, that a person, namely, Rajendra Kharwar, had been shot dead at village Dehri Kothadera and, having informed his superior officer about this occurrence, he (PW 7) came to the said village at 8.30 AM and recorded the informant's *fardbeyan*, which has been proved and marked Exhibit-1.

26. There is, therefore, considerable force in the submissions of Mr. Baxi, learned Senior counsel, that since no



explanation has been offered by the prosecution as to why none of the accused-appellants was named as assailant to the police, who had arrived from the nearby police out-post and/or from the local police station, it was possible that names of the present accused-appellants came to be mentioned after due deliberation and mutual consideration and, therefore, Exhibit-1, which has been treated as the First Information Report, ought to have been treated bereft of its value as the First Information Report.

27. Coupled with the above, it is also worth pointing out that according to the Investigating Officer (PW 7), the *fardebayan* was recorded, at the place of occurrence, at 8.30 AM, whereas PW 3 has claimed that the *fardebayan* was recorded at the police out-post.

28. Thus, even with regard to the lodging of the *fardebayan* (Exhibit-1), there is no consistent evidence.

29. What also needs to be noted, now, is that according to the evidence of PW 7, while he was on law and order duty, he (PW 7) received information, on his mobile phone, that one Rajendra Kharwar had been shot dead at village Dehri Kothadera and it was pursuant to this information that he (PW 7) arrived at the place of occurrence.

30. Clearly, thus, the information, which PW 7 had received, on his mobile phone, at 08:30 AM, was an information

relating to commission of *cognizable offence* and it was in order to determine the truth of the information and ascertain as to who the assailant was and/or how the murder had taken place that PW 7 had arrived at the place of occurrence.

31. The information, therefore, which PW 7 had received, on his mobile phone and which had set the law into action, was, strictly speaking, the First Information Report.

32. Hence, the *fardbeyan* (Exhibit-5), though treated as First Information Report really constitutes nothing, but a statement recorded during investigation of the case and could not have been treated, and ought not to have been treated, as the First Information Report. Reference, in this regard, made by Mr. Baxi, learned Senior Counsel, to the case of **The State of Bihar v. Rajendra Mahalda**, reported in **2015 (2) PL JR 79**, is not misplaced.

33. Coupled with the above, there is considerable force in the submissions of Mr. Baxi, learned Senior Counsel, that since the names of the assailants came to be belatedly mentioned, reasonable possibility of the accused-appellants having been implicated, in this case, as assailants, because of the animosity and suspicion, cannot be ruled out.

34. That the evidence of the informant (PW 3), describing the occurrence and implicating the appellants as assailants, is untrue becomes glaring to the eyes, when we

notice that according to the doctor (PW 6), upon conducting *post mortem* examination, stomach and even the urinary bladder showed that the said deceased had already attended the nature's call before he was killed.

35. In the face of the above undisputed finding of the doctor, there can be no escape from the conclusion that the assertion of PW 3 that his father, Rajendra Kharwar, was proceeding to answer the nature's call, when the two of the accused-appellants caught hold of him and started pulling and dragging him with the help of their associates cannot but be regarded as wholly untrue.

36. It is also worth pointing out that if the informant's evidence is found either unbelievable and unsafe, no reliance can be placed on the remaining ocular evidence on record inasmuch as it is the case of the prosecution, as has been made out by the evidence on record, that it was upon the alarm raised by informant (PW 3) that the other witnesses had turned up. If the evidence of PW 3 is not found to be sufficiently safe to place reliance upon, other witnesses cannot be readily believed.

37. The impression that the evidence, adduced by the prosecution, is unsafe to place reliance upon gets also strengthened from the fact that according to the evidence of prosecution witnesses, the said deceased had been assaulted by



the butt of the gun too; but no evidence, commensurate with such assault, was found on the said dead body either by the police or by the doctor. Moreover, the evidence of the prosecution witnesses is that the said deceased was pulled and dragged from the field of Sachidanand Ray to the field of Rambachan Singh and had been assaulted by the butt of the gun. However, the police found that *lota* (i.e., water pot), which the said deceased claimed to have been carrying, was lying at Rambachan Singh's field, where the said deceased had been dragged to.

38. It is wholly unbelievable, as correctly pointed out on behalf of the accused-appellants, that if a number of person have been pulling and pushing Rajendra Kharwar and he was even hit by the butt of the gun, yet *lota* (i.e., pot of water) would have been still found lying at Rambachan Singh's field, where the said deceased was, eventually, dragged to. On this aspect, we cannot ignore the fact that the Investigating Officer has admitted that he did not find any sign of anyone having been dragged at the place of occurrence.

39. What can also not be ignored is that according to the evidence on record, the deceased had sustained *ante mortem* injuries from rifle and also from gun. PW 2 has claimed that the said deceased was shot dead from a distance of one or two yards and PW 3 has claimed that the said deceased was

shot dead from a distance of about two steps. The *post mortem* report did not, however, reveal any pellets at or around the wound, which the said deceased had sustained indicating thereby that a gun had not been used inasmuch as the use of gun would have resulted in fragmentation of bullet into several pellets.

40. Besides what have been discussed and pointed out above, we note, as has been pointed out, on behalf of the accused-appellants, that the doctor (PW 6) had found burn present around the wound of entry showing thereby that the fire-arm had been used close to the body or the fire-arm was in actual contact with the body of the said deceased, when the said deceased was shot, whereas the ocular evidence of PW 2 on record is that the said deceased had been shot from a distance of 1 or 2 yards, showing thereby that the burn injury could not have taken place if the said deceased had been shot from a distance of 1 or 2 yard.

41. What crystallizes from the above discussions is that the names of the appellants, as assailants, were disclosed not to the police at the earliest point of time. This apart, medical evidence on record does not support the version of the occurrence as depicted by the informant (PW 3) and other witnesses. Moreover, the recovery of *lota* (pot of water) from the place of occurrence and the absence of any sign of anyone

having been dragged to the place of occurrence, make it further unsafe to place reliance on the evidence of the informant and other witnesses.

42. In the background of the discrepancies with which the evidence of the eye witnesses suffer from, we are clearly of the view that none of the witnesses can be safely relied upon.

43. In the absence of any other evidence, supporting the description of the occurrence given by the eye-witnesses, one has no option, but to hold, and we do hold, that none of these witnesses, who have claimed themselves to be eye-witnesses, can be treated or held to be *wholly reliable*. Even if their evidence is not rejected by the Court as *wholly unreliable*, their evidence would fall, at best, in the category of those witnesses, who are *neither wholly reliable nor wholly unreliable*.

44. It is trite that the witnesses, ordinarily, fall into three distinct categories, namely, (i) wholly reliable, (ii) wholly unreliable and (iii) neither wholly reliable nor wholly unreliable. If the witness is *wholly reliable*, his evidence can be implicitly relied upon and such a witness's testimony can be made basis for conviction of an accused. Similarly, when a witness is found to be *wholly unreliable*, no reliance can at all be placed on his evidence and his evidence has to be rejected

outright. When, however, a witness is found to be *neither wholly reliable, nor wholly unreliable*, his evidence cannot be accepted as true unless his evidence is found to have been corroborated by some credible independent evidence, direct or circumstantial.

45. The evidence of the eye-witnesses, which the prosecution has adduced in the present case, cannot be safely relied upon unless the same is found to have been corroborated by some credible independent evidence, direct or circumstantial.

46. It is also an undisputed position of law that one infirm witness cannot be treated to have corroborated the evidence of another infirm witness meaning thereby that witnesses of same brand cannot be taken to have corroborated each other. Thus, when a witness is *neither wholly reliable nor wholly unreliable*, his evidence cannot be taken to have been corroborated by a witness of the same brand, namely, a witness, who is *neither wholly reliable nor wholly unreliable*, for, evidence is not to be counted, but weighed. It is not the number of the witnesses, which determines the outcome of a trial; rather, it is the inherent falsity or truth of the evidence given by the witness, which decides the outcome of trial. If each one of a large number of witnesses is found to be *wholly unreliable*, their evidence cannot become acceptable as true merely because a large number of similar brand of witnesses has corroborated

each other.

47. A reference, with regard to the above position of law, may be made to the case of Muluwa, S/o Binda and others Vs. The State of Madhya Pradesh, AIR 1976 Supreme Court 989, wherein the Supreme Court has observed as follows:

"It is elementary that the evidence of an infirm witness does not become reliable merely because it has been corroborated by a number of witnesses of the same brand; for, evidence is to be weighed not counted. Since the evidence of P.Ws. 5 and 6 suffered from the same infirmities as that of Smt. Jugatia, it cannot be said that the trial Judge had no basis, whatsoever, for stigmatising it as unreliable."

(Emphasis is added)

48. Situated thus, it is clear that merely because some persons, claiming themselves to be eye-witnesses, have given evidence describing the occurrence in tune with each other, their evidence cannot be relied upon or could have been made the basis of conviction of the accused-appellant.

49. Situated thus, we are clearly of the view that in the facts and attending circumstances of the present case, prosecution has failed to prove its case beyond reasonable doubt and the accused-appellants ought to have been accordingly acquitted under benefit of doubt.

50. In the result and for the forgoing reasons, we allow these three appeals. The impugned conviction of the accused-appellants and the sentences passed against them by the judgment and order, under appeal, are hereby set aside. The accused-appellants are held not guilty of the offences, which they stand convicted of, and they are hereby acquitted of the same under benefit of doubt.

51. Since the accused-appellants, namely, Rakesh Yadav, Rama Shankar Rajbhar and Rama Shankar Yadav are on bail, their bail bonds are hereby cancelled and their sureties shall stand discharged.

52. As the accused-appellant, Santosh Kumar Gupta, is in custody, let him be set at liberty, forthwith, unless he is required to be detained in connection with any other case.

53. The Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the lower court record.

(I. A. Ansari, J.)

(Nilu Agrawal, J.)

A.I./ A.F.R.

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