

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 513 of 2008

Against the judgment of conviction, dated 11.04.2008, and order of sentenced dated 16.04.2008, passed by Sri Ramesh Chandra Singh, learned Additional Sessions Judge, Fast Track Court, IV, East Champaran at Motihari, in Sessions Trial No. 1288 of 1974/2006 of 2007 arising out of Mehshi P.S. Case No. 6 of 2005

- =====
1. Amit Pathak, son of Late Prem Nath Pathak, resident of village Maduabad, P.S. Mehshi, district East Champaran
 2. Bangali Pandey, son of Mahendra Pandey @ Rajenmdra Pandey, resident of village Birpur, P.S. Kanti, district Muzaffarpur
- Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellants : Mr. Akhileshwar Prasad Singh, Sr. Adv.
with
M/S Seema Singh, Mithilesh Kumar, Advs.

For the Respondent : Mr. Ajay Mishra, APP

Mr. Ravindra Kumar, Advocate as Amicus Curiae

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

AND

HONOURABLE MR. JUSTICE GOPAL PRASAD

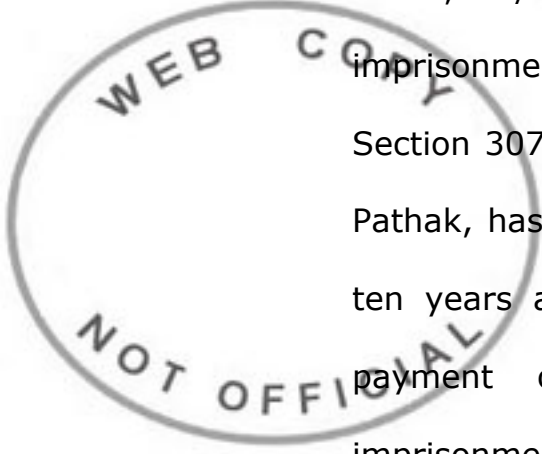
ORAL JUDGMENT

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

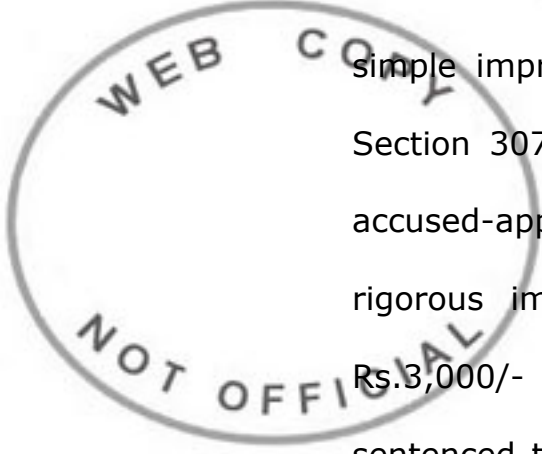
Date: 23-03-2015

Under the judgment, dated 11.04.2008, passed, in Sessions Trial No. 1288 of 1974/2006 of 2007, by learned Additional Sessions Judge, Fast Track Court, IV, East Champaran, at Motihari, the accused-appellants, Amit Pathak and Bangali Pandey, stand convicted under Sections 302 and 307 read with Section 34 of the Indian Penal Code, Section 27 of the Arms Act, 1959, read with Section 34 of the Indian Penal Code and Sections 3 and 5 of the Explosive Substances Act, 1908, read with Section 34 of the Indian Penal Code. For his conviction under Section 302 of the Indian Penal Code, the accused-appellant, Amit Pathak, has

been sentenced to suffer life imprisonment and also pay a fine of Rs.10,000/- and, in default of payment of fine, suffer simple imprisonment for a period of six months. For his conviction under Section 307 of the Indian Penal Code, the accused-appellant, Amit Pathak, has been sentenced to undergo rigorous imprisonment for ten years and also pay a fine of Rs.5,000/- and, in default of payment of fine, further sentenced to undergo simple imprisonment for three months. For his conviction under Section 27 of the Arms Act, 1959, read with Section 34 of the Indian Penal Code, the accused-appellant, Amit Pathak, has been sentenced to suffer rigorous imprisonment for seven years and also pay a fine of Rs.5,000/- and, in default of payment of fine, he is further sentenced to undergo simple imprisonment for three months. For his conviction under Sections 3 of the Explosive Substances Act, 1908, the accused-appellant, Amit Pathak, has been sentenced to suffer rigorous imprisonment for ten years and also pay a fine of Rs.10,000/- and, in default of payment of fine, further sentenced to undergo simple imprisonment for six months. For his conviction under Sections 5 of the Explosive Substances Act, 1908, the accused-appellant, Amit Pathak, has been sentenced to suffer rigorous imprisonment for ten years and also pay a fine of Rs.10,000/- and, in default of payment of fine, further sentenced to undergo simple imprisonment for six months. For his conviction under Section 302 read with Section 34 of the Indian Penal Code, the accused-appellant, Bangali Pandey, has been sentenced to



suffer imprisonment for life and also pay a fine of Rs.5,000/- and, in default of payment of fine, he is further sentenced to undergo simple imprisonment for three months. For his conviction under Section 307 read with Section 34 of the Indian Penal Code, the accused-appellant, Bangali Pandey, has been sentenced to suffer rigorous imprisonment for ten years and also pay a fine of Rs.3,000/- and, in default of payment of fine, he is further sentenced to undergo simple imprisonment for three months. For his conviction under Section 27 of the Arms Act, 1959 read with Section 34 of the Indian Penal Code, the accused-appellant, Bangali Pandey, has been sentenced to suffer rigorous imprisonment for five years and also pay a fine of Rs.3,000/- and, in default of payment of fine, he is further sentenced to undergo simple imprisonment for three months. For his conviction under Section 3 of the Explosive Substances Act, 1908 read with Section 34 of the Indian Penal Code, the accused-appellant, Bangali Pandey, has been sentenced to suffer rigorous imprisonment for ten years and also pay a fine of Rs.5,000/- and, in default of payment of fine, he is further sentenced to undergo simple imprisonment for three months. For his conviction under Section 5 of the Explosive Substances Act, 1908, read with Section 34 of the Indian Penal Code, the accused-appellant, Bangali Pandey, has been sentenced to suffer rigorous imprisonment for ten years and, in default of payment of fine, he is further sentenced to undergo simple imprisonment for three months. All the sentences were



ordered to be run concurrently.

2. The case of the prosecution, as unfolded at the trial, may, in brief, be set out as under:

(i) On 12th January, 2005, at about 12.30/12.45 A.M., when the informant, Lallan Pathak (P.W. 8), was sleeping with his wife, Gita Pathak, in a room, at his house, and his son, Shailesh Pathak (since deceased), was also present in another room of the house, the informant and his wife, Gita Pathak (P.W. 9), heard the sound of some persons moving around in the courtyard of their house.

(ii) Anxious to know at who were present outside their house, the informant (P.W. 8) opened the door and, in the light of the bulb, which was kept lit, the informant and his wife saw, at the verandah of their house, accused Amit Pathak, Bhola Tiwary and Bangali Pandey, along with some other persons, who were armed with pistol, axe and *lathis*, and were carrying bombs in a bag. As soon as accused Amit Pathak saw the informant (P.W. 8), he asked his associates to shoot the informant (P.W. 8) down and, immediately, thereafter, accused Amit Pathak himself fired a bullet from his pistol. As P.W. 8 shifted his position by leaning on one side, the bullet passed by his side without hurting him. Accused Bangali Pandey, then, threw a bomb on P.W. 8, which caused injuries on the persons of the informant (P.W. 8) and his wife, Gita Pathak (P.W. 9) too. Having been so injured, the informant (P.W. 8) ran away through the backdoor of his house

and hid himself in an orchard located by the side of his house. Before, however, P.W. 8 ran away as mentioned hereinbefore, Shailesh Pathak, son of the informant, came out of his room, where he was sleeping, and as soon as Shailesh Pathak appeared, accused Umesh @ Chhotan Tiwary, accused Bhola Tiwary and Bangali Pandey caught hold of Shailesh Pathak and accused Amit Pathak fired at him. As a result thereof, Shailesh Pathak fell down and died. As the police, at Mehsi Police Station, were telephonically informed that there was firing and bomb explosions had taken place, police came to the house of the informant (P.W. 8), where the informant gave oral information with regard to the occurrence. The information, so given by P.W. 8, was reduced into writing and treating the same as First Information Report, Mehsi P.S. Case No. 6 of 2005 was registered, under Sections 147/148/149/307/302/379 of the Indian Penal Code, 27 of the Arms Act, 1959, and Sections 3 and 4 of the Explosive Substances Act, 1908, against accused Amit Pathak, Bangali Pandey, Bhola Tiwary and Umesh @ Chhotan Tiwary.

3. During investigation, inquest was held over Shailesh Pathak's dead body, which was also subjected to *post mortem* examination. At his house, the informant produced before the police one live cartridge of 3.5 bore of pistol, an empty cartridge and also a bomb tied with a thread and, on production of the said items, police seized the same by a seizure list (Exhibit 5). Having found blood at the orchard aforementioned, police seized

the blood-stained earth. However, the blood stained earth was not sent for serological examination, the two injured persons, namely, Lallan Pathak (P.W. 8) and Gita Pathak (P.W. 9) were medically examined and, on completion of investigation, *charge sheet* was laid, under Sections 147/148/149/307/302 of the Indian Penal read with Section 27 of the Arms Act, 1959, and Sections 3 and 5 of the Explosive Substances Act, 1908, read with Section 149 of the Indian Penal Code, against accused Amit Pathak, Bangali Pandey and Umesh @ Chhotan Tiwary.

4. At the trial, when *charges*, under Section 302 and 307 of the Indian Penal Code, Section 27 of the Arms Act, 1959, and Sections 3 and 5 of the Explosive Substances Act, 1908, were framed against the accused aforementioned, they all pleaded not guilty thereto.

5. In support of their case, prosecution examined as many as 13 (thirteen) witnesses including two Investigating Officers. The accused were, then, examined under Section 313 (1) (b) of the Criminal Procedure Code and, in their examinations aforementioned, the accused persons denied that they had committed the offences, which were alleged to have been committed by them, the case of the defence being that of denial. No evidence was adduced by the defence.

6. Having, however, arrived at the finding that accused-appellants, Amit Pathak and Bangali Pandey, had been proved guilty of the *charges* under Section 302 and 307 of the

Indian Penal Code, Section 27 of the Arms Act, 1959, and Section 3 and 5 of the Explosive Substances Act, 1908, the learned trial Court convicted them accordingly. Following their conviction, sentences have been passed against the convicts, Amit Pathak and Bangali Pandey, as mentioned above.

7. Aggrieved by their conviction and the sentences passed against them, the convicts, Amit Pathak and Bangali Pandey, have preferred this appeal.

8. We have heard Mr. Akhileshwar Prasad Singh, learned Senior Counsel, appearing on behalf of the appellants, and Mr. Ajay Mishra, learned Additional Public Prosecution, appearing for the State. We have also heard Mr. Rabindra Kumar, learned Counsel, appearing as *Amicus Curiae*.

9. While considering the present appeal, what needs to be noted is that out of 13 witnesses, who have been examined by the prosecution at the trial, P.W. 1 (Kameshwar Pathak) is cousin of the informant, P.W. 2 (Dhananjay Pathak) is nephew of the informant, P.W. 3 (Chandrabhushan Pathak) is full brother of the informant, P.W. 4 (Yogendra Pathak) is the father of the informant and grand-father of the said deceased, Shailesh Pathak, P.W. 6 (Seema Pathak) is daughter-in-law of the informant, P.W. 7 (Suman Priya) is the sister of the informant and P.W. 5 (Kedar Pathak) is a co-villager of the informant, but none of them has supported the case of the prosecution and though they were declared *hostile* and cross-examined by the prosecution,

nothing was elicited from their cross-examination to show that they had, indeed, witnessed the occurrence either as a whole or in part.

10. Thus, one of the most noticeable features of the present case is that except the parents of deceased, Shailesh Pathak, i.e., P.W. 8 and P.W. 9, none from the members of the family of the deceased has supported the evidence, given, at the trial, by the informant and his wife implicating the present appellants. Not even the father of the informant and daughter-in-law of the informant, who used to live with the informant, supported the evidence of the informant (P.W. 8) and his wife (P.W. 9).

11. Coupled with the above, though the *charge sheet* indicates more witnesses having been examined by police, during investigation, as eye witnesses, the remaining witnesses have not been produced at the trial and no explanation has been offered by the prosecution, in this regard, leaving this Court with no option, but to hold, and we do hold, that these witnesses have been withheld, because they would not have supported the case of the prosecution.

12. What is also important to note is that P.W. 8 and his two sons, namely, Mukesh Pathak and Krishna Kant Pathak, stand convicted, on 27.09.2007, in Sessions Trial No. 887 of 2004, on 27.09.2007, arising out of Mehsi P.S. Case No. 34 of 2003, for having murdered Prem Nath Pathak, father of the accused-appellant, Amit Pathak.

13. Thus, the relation of the informant (P.W. 8) and his wife, Gita Pathak (P.W. 9), on the one hand, and accused-appellant, Amit Pathak, and others, on the other, was inimical. This enmity is a double-edged weapon and cut both ways.

14. While enmity may be the cause for falsely implicating an accused either alone or in association with others, enmity may also become the cause of causing hurt and, in the case of present nature, this animosity, which existed between the informant and the accused, cannot be ignored inasmuch as the accused-appellants had the reason to injure and kill, Shailesh Pathak, whereas the informant and his wife, too, had reason to falsely implicate accused Amit Pathak and his associates.

15. In a case of present nature, evidence needs to be cautiously approached and minutely scrutinized in order to exclude every reasonable possibility of false accusation.

16. Bearing in mind what is indicated above, when we turn to the evidence of P.W. 12 (Dr. Shyam Lal Das), who had, admittedly, conducted, on 12.01.2005, at 11:00 AM, at Sadar Hospital, Motihari, *post mortem* examination on the dead body of Shailesh Pathak, we find that he found following *ante mortem* injuries:

"External injuries

- (i) Punctured wound on left fifth intercostal space, margin inverted
- (ii) Punctured wound on left scapular region, margin everted

Internal injuries

- (iii) Brain and meninges pale
- (iv) Heart ruptured and empty

- (v) Lung ruptured and pale
- (vi) Liver, spleen kidney pale
- (vii) Stomach semi solid food material present.”

17. In the opinion of the doctor (P.W. 12), the death was caused due to shock and haemorrhage as a result of the injuries to the vital organs of the said deceased, the time since death having elapsed being between 12 and 24 hours.

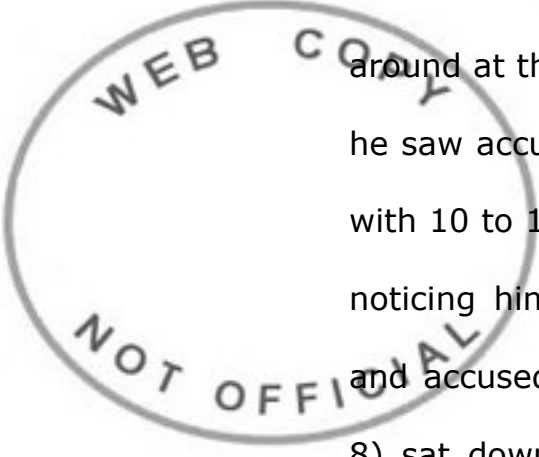
18. What is of great relevance and cannot be ignored, while considering medical evidence on record, is that the said deceased has sustained punctured wound on his left finger, palm and scapular region and there was no injury sustained by him, which can be said to have been caused by bullet.

19. In the face of the medical evidence on record, particularly, when there is nothing specific to assail the medical evidence, we see no reason to disbelieve the evidence given by the doctor (P.W. 12) and if it be so, it logically follows that the findings of the doctor (P.W. 12) belies the prosecution's case that Shailesh Pathak had been shot to death by means of a bullet fired from a pistol.

20. In the backdrop of the above disquieting features of the prosecution's case, when we come to the evidence of the informant (P.W. 8), we notice that according to his evidence, the occurrence took place, on 12.01.2005, between 12.30 A.M. and 12.45 A.M., while he was sleeping in his house with his wife (P.W. 9).

21. Describing the occurrence, the informant





(P.W. 8) has deposed that while he was sleeping with his wife in a room at his house, he heard the sound of some persons moving around at the verandah of his house and when he opened the door, he saw accused, Amit Pathak, Bhola Tiwary, Bangali Pandey, along with 10 to 12 more persons, whom he could not recognize, and, on noticing him (P.W. 8), accused Amit Pathak asked others to fire and accused Amit Pathak too, fired at him (P.W. 8), but he (P.W. 8) sat down and the bullet did not hit him, but accused Bangali Pandey, thereafter, threw a bomb on him (P.W. 8) due to which he (P.W. 8) and his wife (P.W. 9) sustained injuries and, in the meanwhile, his son, Shailesh Pathak, who was sleeping in a room of the said house, came out and accused Bhola Tiwary and accused Bangali Pandey caught hold of Shailesh Pathak and, on being asked by accused Bangali Pandey, accused Amit Pathak shot Shailesh Pathak on his chest by means of a pistol and, on receiving the bullet injury, Shailesh Pathak cried out, fell down and passed away. It is in the evidence of P.W. 8 that he ran away through the backdoor of his house and took shelter in the nearby orchard, where he heard the sound of firing and also explosions of 10 to 12 bombs.

22. On the heels of the evidence of P.W. 8, P.W. 9 has deposed that on hearing the sound of some persons moving at the verandah of their house, when her husband (P.W. 8) opened the door, they (P.Ws. 8 and 9) saw accused, Amit Pathak, Bangali Pandey and Bhola Tiwary, along with some other persons,

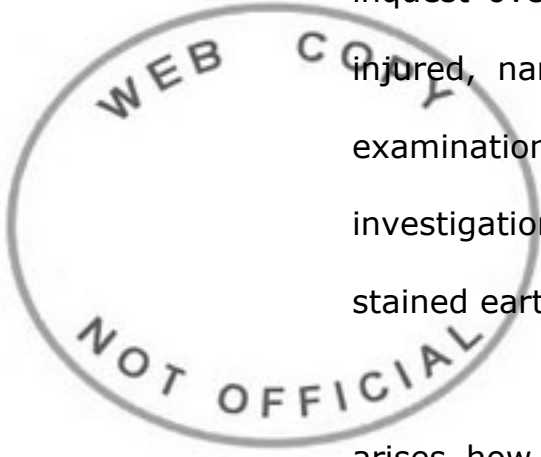
in the courtyard of their house and as soon as her husband (P.W. 8) opened the door, accused Amit Pathak asked others to murder her husband (P.W. 8) and, then, he (accused Amit Pathak) himself fired at her husband (P.W. 8), but her husband sat down and, then, accused Bangali Pandey threw a bomb, which injured her and her husband and when her son, Shailesh Pathak, came out of the room, where he was sleeping, accused, Bhola Tiwary and accused Bangali Pandey, caught hold of her son and accused Amit Pathak shot her son (Shailesh Pathak) dead by means of a bullet and, then, all of them assaulted her with *lathis* and she received injuries on her both legs, knee and thigh.

23. We may pause here to take note of P.W. 10 (investigating officer), whose evidence is that while posted as Officer-in-Charge, Mehshi Police Station, on 12.01.2005, he received a telephonic message, at 01.00 A.M., that Shailesh Pathak, son of Lallan Pathak, a resident of village Maruabad, had been murdered by criminals with firearms and that bombs were also exploded. Having made an entry, in this regard, in the general diary at his Police Station, he (P.W. 10) reached the place of occurrence at about 01.20 A.M. and recorded the *fardbeyan* (Exhibit 2) of injured Lallan Pathak (P.W. 8) and inspected the place of occurrence. It is in the evidence of P.W. 10 that he also found Gita Pathak sitting near the dead body of her son, Shailesh Pathak, and weeping and smell of bomb explosions could be felt there and smoke was seen near the threshold of the door of the house. It is also in the

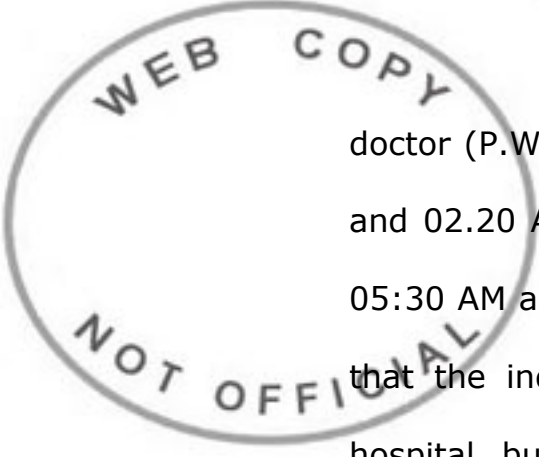
evidence of the investigating officer (P.W. 10) that having held inquest over the dead body of Shailesh Pathak, he sent the two injured, namely, P.W. 8 and P.W. 9, to the doctor for medical examination and that he also found, during the course of investigation, blood on the earth at orchard and seized the blood stained earth.

24. In the evidence of P.W. 10, the question arises how blood was found at the orchard, where P.W. 8 was hiding that if the house of P.W. 8 was the place of occurrence? No explanation has been offered by the prosecution as to how blood was found on the earth at the said orchard and no explanation is discernable, in this regard, from the evidence on record. This apart, P.W. 8 has claimed that he had heard, while hiding at the orchard, 10 to 12 bombs having been exploded, but no sign of such multiple explosions were found at the house of P.W. 8.

25. Moreover, it is worth noticing that the *fardbeyan*, lodged at 01.30 A.M., does not mention the factum of any seizure, but the seizure list records to have been prepared at 12.30 A.M. Similarly, it is the evidence of P.W. 10 (investigating officer), as already indicated above, that after the *fardbeyan* was recorded and the inquest was held, he sent the injured persons to the doctor after half-an-hour of his arrival at the place of occurrence. Surprisingly, however, the inquest was held, according to the inquest report, on 12.01.2005, at 05.30 A.M., whereas the doctor (P.W. 13) has claimed, in his evidence, that he examined



P.W. 8, on 12.01.2005, at 02.00 A.M., and P.W. 9 on the same day at 02.20 A.M.



26. Thus, in the light of the evidence of the doctor (P.W. 13), P.W. 8 and P.W. 9 were examined at 02.00 A.M. and 02.20 A.M. respectively, whereas the inquest report mentions 05:30 AM as the time of holding of the inquest. This clearly follows that the inquest was held after sending the two injured to the hospital, but the Investigating Officer claims that the inquest was held before the injured were sent to the hospital for their medical examination. The evidence on record also does not explain as to how the seizure list was prepared at 12.30 A.M., when the police arrived at the place of occurrence, according to the evidence of the investigating officer (P.W. 10) himself, after receiving telephonic message at 01.00 A.M., on 12.01.2005, at the said Police Station.

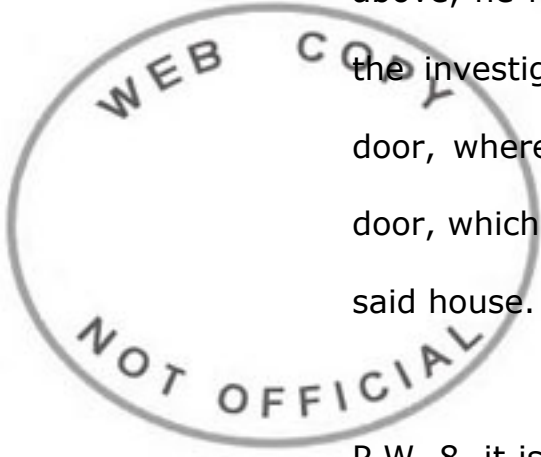
27. What also can not be ignored is that the evidence of the doctor (P.W. 13) shows that no burn injuries were sustained by P.W. 8 and P.W. 9: whereas both of them, i.e., P.W. 8 and P.W. 9 have claimed that they were injured by throwing of bomb at them. Interestingly enough, however, seizure of articles, such as, bomb, one empty and one live cartridges, etc., were made by the Investigating Officer on the same being produced by the informant, From where the informant produced these articles have not been explained by the prosecution.

28. When the above aspects of the case is considered in the light of the evidence of the investigating officer

(P.W. 10), we find that according to P.W. 8, as already indicated above, he had run away from the backside door of his house; but the investigating officer (P.W. 10) asserts that except the front door, where the occurrence had taken place, there was no other door, which could have been used by any one to run away from the said house. Palpably, therefore, the evidence of P.W. 8 is false.

29. While considering the evidence given by P.W. 8, it is also noteworthy that in the *fardbayan* of P.W. 8, apart from accused Amit Pathak, Bangali Pandey, Bhola Tiwary, accused Umesh @ Chhotan Tiwary was also involved. Even the *charge sheet* has been laid against accused Umesh @ Chhotan Tiwary surprisingly, however, not a word has been said by P.W. 8 and P.W. 9, in their evidence, implicating accused Umesh @ Chhotan Tiwary. This shows that either accused Umesh @ Chhotan Tiwary was falsely implicated in this case or he has been allowed to be acquitted by P.W. 8 and P.W. 9 by not giving any incriminating evidence against him (i.e., accused Umesh @ Chhotan Tiwary). This, in turn, shows that P.W. 8 and P.W. 9 are witnesses, who were capable of implicating persons falsely inasmuch the *fardbayan* very clearly and prominently mentions the name of accused Umesh @ Chhotan Tiwary as one of the associates of accused Amit Pathak.

30. We may also hasten to clarify that though the *fardbayan*, which stands proved as Exhibit 2, has been treated as the First Information Report of the case, the same was not the First Information Report, and ought not to have been treated as



the First Information Report of the case, inasmuch as the evidence of the investigating officer (P.W. 10) clearly shows that having received the telephonic information, at his Police Station about commission of *cognizable offences* that Shailesh Pathak had been killed and bombs had been exploded, an entry, in this regard, was made in the general diary and, then, he proceeded to investigate the case and it was during the course of investigation that he (P.W. 10) arrived at the house of the informant and recorded the statement of P.W. 8, as *fardbayan*, treating P.W. 8 as the informant; whereas the said statement, recorded as *fardbayan* and treated as the First Information Report, was nothing, but a statement of P.W. 8 recorded during investigation of the case under Section 161 of the Criminal Procedure Code and the contents thereof can be used only for the purpose of contradicting P.W. 8.

31. Notwithstanding the fact that investigating officer has deposed that he received the smell of bomb explosion at the house of the informant, nothing, as already indicated above, was found to indicate that any bomb had been hurled there or exploded there. It, thus, becomes more and more clear that P. Ws. 8 and 9 have given a colorized version of the occurrence and their evidence has been contradicted on every aspect by the remaining evidence on record.

32. In the circumstances, indicated above, none of the two witnesses, P.Ws. 8 and 9, can be regarded as wholly unreliable witness. Even if, therefore, their evidence is not

rejected as wholly unreliable, their evidence will, at best, fall in the category of those witnesses, who are neither wholly reliable nor unreliable.

33. 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.

34. The evidence of P.W. 8 and P.W. 9, on whose evidence the prosecution's case rests, cannot be safely relied upon unless the same is found to have been corroborated by some credible independent evidence, direct or circumstantial.

35. It is also an undisputed proposition 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 brands of witnesses have corroborated each other.

36. A reference, with regard to the above proposition of law, may be made to the case of **Muluwa, S/o Binda and others Vs. The State of Madhya Pradesh, [AIR 1976 SC 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 stigmatizing it as unreliable."

37. Situated thus, it is clear that merely because P.W. 8 and P.W. 9 have given evidence corroborating each other's evidence, their evidence cannot be made basis for holding them truthful witnesses, when each one of them is a witness, who

is neither wholly reliable nor wholly unreliable, for, one infirm witness cannot be treated to have corroborated the evidence of another infirm witness.

38. In the light of the evidence, which has surfaced, it clearly follows that the evidence of P.W. 8 and P.W. 9, coupled with the remaining evidence on record, the accused-appellants could not have been held to have been proved to be guilty of the charges brought against them. At any rate, accused-appellants deserve to be given, at least, benefit of doubt.

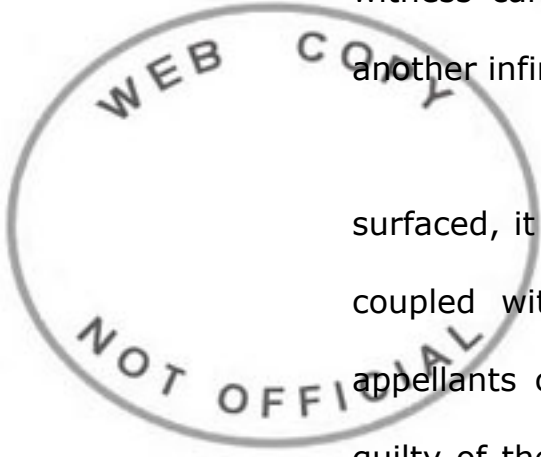
39. In the result and for the foregoing reasons, we allow this appeal. The impugned conviction of the accused-appellants and the sentences passed against them, by the judgment and order, under appeal, are hereby set aside. The accused-appellants are held not guilty of the offence, which they stands convicted of, and they are hereby acquitted of the same under benefit of doubt.

40. As the accused-appellant, Bangali Pandey, is on bail, his bail bond is hereby cancelled and his sureties shall stand discharged.

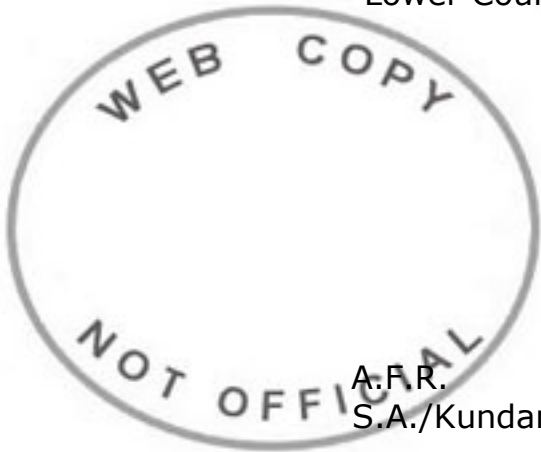
41. Since the accused-appellant, Amit Pathak, is in custody, he is directed to be released forthwith if not required to be detained in connection with any other case.

42. Let the Amicus Curiae be paid a fee of Rs. 5,000/-.

43. Registry shall, forthwith, send a copy of



this judgment and order to the learned trial Court, along with the
Lower Court Records.



A.F.R.
S.A./Kundan

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(I. A. Ansari, J.)

(Gopal Prasad, J.)