

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.700 of 2008
with
Criminal Appeal (DB) No. 624 of 2008

Against the judgment of conviction, dated 23.05.2008 and the order of sentence, dated 26.05.2008, passed by Sri Vijay Shankar Pathak, Additional Sessions Judge, Fast Track Court No. III, Nawada, in Sessions Trial No. 240 of 2003/53 of 2005, arising out of Kauakol (Rupau) Police Station Case No. 100 of 2002.

Nago @ Nageshwar Mali, Son of Late Baldeo Mali, resident of Village- Jogeshpur, P.S. Kawakole (Rupau), District- Nawada.

.... Appellant **(In Cri. App. No. 700 of 2008)**
with

Karu Mali, Son of Late Baldeo Mali, R/o Village- Jogeshpur, P.S. Kawakole ((Rupau), District- Nawada.

.... Appellant **(In Cri. App. No. 624 of 2008)**

Versus

The State of Bihar ... Respondent **(In both appeals)**

Appearance :
(In both Appeals)

For the Appellants : None
For the Respondent : Mr. Ajay Mishra, A.P.P.

Mrs. Anuradha Singh, Advocate as Amicus Curiae in Cr. App(DB) No.700/2008
Mrs. Rina Sinha, Advocate as Amicus Curiae in Cr. App(DB)No.624/2008

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
AND
HONOURABLE MR. JUSTICE GOPAL PRASAD
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE GOPAL PRASAD)

Date: 08-07-2015

Under the judgment, dated 23.05.2008, passed, in Sessions Trial No. 240 of 2003/53 of 2005, by learned Additional Sessions Judge, Fast Track Court No. III, Nawada, while the accused-appellant, namely, Nago @ Nageshwar Mali, stands convicted under Sections 302 and 307 of the Indian Penal Code



the accused-appellant, Karu Mali, stands convicted under Section 326 of the Indian Penal Code. For his conviction under Section 302 of the Indian Penal Code, while the accused-appellant, Nago @ Nageshwar Mali, has been sentenced, under the order, dated 26.05.2008, to suffer imprisonment for life, he has been sentenced, for his conviction under Section 307 of the Indian Penal Code, to undergo rigorous imprisonment for a period of 7 (seven) years. For his conviction under Section 326 of the Indian Penal Code, accused-appellant, Karu Mali, has been sentenced to undergo rigorous imprisonment for a period of 5 (five) years and pay fine of Rs. 5,000/- and, in default of payment of fine, undergo simple imprisonment for a period of 6 (six) months.

2. The case of the prosecution, as unfolded by the First Information Report, may, in brief, be described thus:

(i) The house of Nago @ Nageshwar Mali, cousin of the informant, Prakash Malakar @ Prakash Mali (PW 8), is adjacent to the house of Prakash Malakar @ Prakash Mali. The grand-father of the informant, namely, Chotan Mali, asked accused Nageshwar Mali to remove the fencing of *toddy* leaves, which were hanging outside the house of Nageshwar Mali and creating thereby inconvenience to Chotan Mali, grand-father of the informant, who used to fall at night.

(ii) On being so asked by Chotan Mali (PW 7) to remove the *toddy* leaves, accused Nageshwar Mali became



furious and started abusing Chotan Mali. In the meanwhile, Uma Devi (PW 9), mother of the informant, came out of her house and tried to pacify Nageshwar Mali. When Uma Devi was trying to pacify Nageshwar Mali, Kishori Mali (since deceased), father of the informant, came from outside after answering the call of nature. However, accused Shanti Devi, mother of accused Nageshwar Mali and his brother, Karu Mali, also came to the place, where exchange of abuses between the two parties was taking place. Accused Shanti Devi, then, rushed to her house and came out with two swords and gave one sword each to her sons, accused Nageshwar Mali and accused Karu Mali. Taking the sword in hand, accused Nageshwar Mali gave 3 to 4 blows by means of sword to Chotan Mali. The blows, so given by sword, fell on Chotan Mali's head, shoulder and right rib, and blood started oozing out and when Kishori Mali, father of the informant, rushed to save Chotan Mali, accused Nageshwar Mali gave a blow with the sword on Kishori Mali's neck with such severe force that the neck of Kishori Mali was cut more than half and blood started oozing out. Having been so injured, Kishori Mali fell unconscious. When the mother of the informant, Uma Devi, rushed, along with the informant, to save Kishori Mali, accused Nageshwar Mali assaulted the mother of the informant, Uma Devi, too, causing injury on her palm, head, back, right arm and shoulder and, as a result of these blows, Uma Devi also fell down and became

unconscious. Besides the assault, which took place on Kishori Mali, Chotan Mali and Uma Devi, accused Karu Mali assaulted the informant, by means of sword, but somehow, the informant managed to save by taking the blow on his hand. Consequently, the blow fell on his palm and he was injured.

(iii) In the meanwhile, Usha Devi, wife of accused Nageshwar Mali, Rekha Devi, wife of younger brother of accused Nageshwar Mali, and Shalbia Devi, wife of Suresh Malakar, elder brother of accused Nageshwar Mali, assaulted the informant and others by means of *lathis* and sticks.

(iv) As the co-villagers of the assailants and the victims started reaching the place of occurrence, accused persons fled away from the place of occurrence, entered into their house and closed their house. There was land dispute between the family of the informant and the accused.

(v) On being informed about the occurrence, police from Rupau Police Station came to the place of occurrence on 31.08.2002, at 06:15 AM. To the police, Prakash Malakar (PW 8), orally, reported the entire occurrence and his version of the occurrence was recorded in the form of *fardbayan*. Treating the said *fardbayan* as the First Information Report, Kouwakol (Rupau) Police Station 100 of 2002 was registered, under Sections 147/148/149/307/302 of the Indian Penal Code, against 6 (six) accused persons, namely, (i) Shanti Devi, (ii) Nageshwar

Mali, (iii) Karu Mali, (iv) Shalbia Devi, (v) Usha Devi, and (vi) Rekha Devi.

(vi) So far as Kishori Mali was concerned, he succumbed to his injuries and the remaining injured persons were treated at Sadar Hospital, Nawada.

(vii) During investigation, police held inquest over Kishori Mali's dead body, which was also subjected to *post mortem* examination, and, on completion of investigation, a *charge sheet* was laid, under Sections 302 and 307 read with Section 34 of the Indian Penal Code, against two of the accused, namely, Nageshwar Mali and Karu Mali.

3. At the trial, when charges, under Sections 302 and 307 read with Section 34 of the Indian Penal Code, were framed against the two accused, both the accused pleaded not guilty thereto

4. In support of their case, prosecution examined as many as 10 (ten) witnesses. Accused were, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure and, in their examinations aforementioned, both the accused 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 and that they had been falsely implicated in the case. It is also case of the defence that the prosecution party entered into the house of Nageshwar Mali to commit

dacoity and, in the encounter, both parties suffered injuries and Kishori Mali succumbed to his injuries. It is the further case of the defence that though the prosecution case is that the occurrence took place at the door of the house, the blood was found in the *gali* or lane and, hence, the prosecution witnesses have not revealed the truth on record.

5. Having, however, arrived at the finding that accused aforementioned had been proved guilty of the offences charged with, learned trial Court convicted them as indicated hereinbefore. Following their conviction, sentences have been passed against the accused persons as mentioned above.

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

7. Both these appeals having, thus, arisen out of the impugned judgment of conviction, dated 23.05.2008, and the impugned order of sentence, dated 26.05.2008, these appeals have been taken up together and are being disposed of by this common judgment and order.

8. We have heard Mr. Nand Kishore Prasad, learned Additional Public Prosecutor, appearing on behalf of the State, in both the appeals, and Mrs. Anuradha Singh, learned Counsel, appearing as *Amicus Curiae*.

9. While considering the present appeals, let us, first,

take note of the medical evidence on record with regard to the examination and treatment of informant, Prakash Malakar (PW 8), informant's mother, Uma Devi (PW 9), and informant's grand-father, Chotan Mali (PW 7) and also the contents of the *post mortem report*.

10. It is in the evidence of PW 10 (Dr. Rajendra Kumar) that on 31.08.2002, at about 08:05 AM, he had examined, at Sadar Hospital, Nawada, Uma Devi, and found following injuries:

"(i) A sharp cut of left palm across anterior-posterior aspect though and through of size 3 inch x 1/3 inch x anterior-posterior aspect.

(ii) A sharp cut wound on right side of scalp of size 3 inch x 1/4 inch x bone deep.

(iii) Loss of tip of little finger

(iv) A lacerated injury on right scapular region of size 2½ inch x 1/3 inch x bone deep

(v) An abrasion on right elbow joint of size 1/6 inch x 1/8 inch.

(vi) A sharp cut injury on right shoulder joint of size 1 inch x ½ inch"

11. In the opinion of the doctor (PW 10), injury Nos. (iv) and (v) had been caused by hard blunt substance, such as, *lathis*, whereas injury Nos. (i), (ii), (iii) and (vi) had been caused by sharp cutting weapon, such as, sword.

12. Similarly, PW 10, on 31.08.2002, at about 08:15

AM, examined Prakash Mali, informant of this case and son of the deceased, and found following injuries:

"(i) A cut injury on left palm across anterior-posterior aspect though and through of size 4 inch x ½ inch x bone cut.

(ii) A cut injury on posterior aspect 3" x ½" x cutting of tendence."

13. In the opinion of the doctor (PW 10), all the injuries were caused by sharp-cutting weapon, such as, sword.

14. Likewise, PW 10 examined Chotan Mali, grandfather of the informant and father of the deceased, on 31.08.2002, at about 08:25 AM, and found following injuries:

"(i) Lacerated injury on right lateral scalp of size ½ inch x ½ inch

(ii) A cut injury on right shoulder of size 3 inch x ½ inch x bone deep.

(iii) A cut injury on left shoulder of size 2" x ½" x bone deep.

(iv) Abrasion on neck of size 1" x 1/4."

15. In the opinion of the doctor (PW 10), though injury Nos. (i) and (iv) had been caused by hard blunt substance, such as, *lathi*, injury Nos. (ii) and (iii) had been caused by sharp-cutting weapon, such as, sword.

16. Turning to the contents of the *post mortem* report, we find, that Dr. R. P. Singh conducted the *post mortem*

examination on the dead body of Kishori Malakar on 31.08.2002 at about 02:45 PM and found as follows:

"(i) one incised wound on the back of neck of size 3" x 2" x bone deep, cutting muscles, vein, artery and nerve.

(ii) one incised wound on the right side of face and neck of size 5" x 1" x bone deep cutting muscles, vein, artery and mandible.

On Dissection: Both lungs pale and intact, both side of the heard-empty, stomach-empty, bladder-empty, large intestine-filled with gases. All the other internal organs of the abdomen were pale and intact."

17. It is mentioned in the *post mortem* report that the death was due to haemorrhage and shock as a result of the above noted injuries, which were caused by sharp-cutting weapon.

18. Bearing in mind the medical evidence on record, let us, now, turn to the evidence of the informant, Prakash Malakar (PW 8), whose evidence, we find, is that on 31.08.2002, at about 05:30 AM, Chotan Mali (PW 7) told accused Nageshwar Mali to remove the fallen fence of toddy leaves as the toddy leaves were creating trouble to PW 7, whenever he come out of his house, but in response thereto, not only accused Nageshwar Mali, but also his brother, accused Karu Mali, and his mother, accused Shanti Devi, hurled abuses and Shanti Devi went inside the room and came out with two swords



and handed over the swords to her sons, accused Nageshwar Mali and accused Karu Mali, and told them to kill Chotan Mali (PW 7), whereupon accused Nageshwar Mali gave three blows by means of sword on Chotan Mali (PW 7), the blows fell on Chotan Mali's right and left shoulder and also chest and when Kishori Mali, father of the informant (PW 8) and son of Chotan Mali (PW 7), rushed to rescue his father, Chotan Mali, accused Nageshwar Mali gave a blow by means of sword and by the blow, so given by accused Nageshwar Mali, more than half of the neck of Kishori Mali was cut and Kishori Mali fell unconscious.

19. It is in the evidence of PW 8 that when the informant's mother, Uma Devi (PW 9), went forward to save her husband, Kishori Mali, accused Nageshwar Mali gave a blow by means of sword injuring thereby the hand and back of Uma Devi (PW 9) and she (PW 9) fell down. It is also in the evidence of PW 8 that when he (informant, PW 8) rushed to save his mother, Uma Devi (PW 9), accused Karu Mali gave a blow by means of sword, which fell on the informant's right hand.

20. The motive, according to PW 8, is the old land dispute.

21. Broadly in tune with the evidence of the informant, Prakash Mali, is the evidence of Uma Devi (PW 9), wife of the deceased, Kishori Mali (PW 7), father of the deceased, Brahmdeo Mali (PW 5) and Ashok Malakar (PW 6), sons of the

deceased and brothers of the informant (PW 8).

22. Coming to the evidence of PW 1 (Surendra Pandit), we notice that according to his evidence, on the day of occurrence, at about 05:30 AM, he heard *hulla* in the village and went to the place of occurrence and saw that exchange of words were in progress between Chotan Mali (PW 7) and accused Nageshwar Mali and, in the meanwhile, Shanti Devi, mother of accused-appellants, Nageshwar Mali and Karu Mali, brought two swords from her house and handed one sword each to the accused-appellants and told them to cut PW 7 (Chotan Mali) and, then, accused Nageshwar Mali gave three blows by means of sword on Chotan Mali (PW 7), the blow, so given, fell on the head, shoulder and neck of Chotan Mali (PW 7) and when Kishori Mali (since deceased) came to save his father, Chotan Mali (PW 7), accused Nageshwar Mali gave a blow by means of sword on Kishori Mali and by the blow so given by accused Nageshwar Mali, more than half of the neck of Kishori Mali was cut and he fell unconscious. It is in the evidence of PW 1 that when Uma Devi (PW 9) came to save her husband (Kishori Mali), accused Nageshwar Mali gave a blow of sword on her hand and back. It is also in the evidence of PW 1 that though the informant (PW 8), too, received injury, he (PW 1) had not seen anyone assaulting the informant and he had also not seen accused Karu Mali assaulting anyone. It is the further evidence of PW 1 that women

were beaten by the women of the other side.

23. Turning to the evidence of PW 2 (Pannu Pandit), which is same as the evidence of PW 3 (Briju Pandit), we notice that their evidence is that on 31.08.2002, at about 05:30 AM, they heard *hulla* from lane, which passed between the houses of the informant and accused Karu Mali, and when they reached there, they found exchange of words between Chotan Mali (PW 7) and accused Nageshwar Mali and, in the meanwhile, Shanti Devi, mother of the accused-appellants, Nageshwar Mali and Karu Mali, brought two swords from her house and handed one sword each to the accused-appellants and told them to cut Chotan Mali (PW 7) and, then, accused Nageshwar Mali gave three blows by means of sword on Chotan Mali (PW 7), the blows fell on the head, shoulder and neck of Chotan Mali (PW 7) and when Kishori Mali (since deceased) came to save his father, Chotan Mali (PW 7), accused Nageshwar Mali gave two to four blow by means of sword and by the blow so given by accused Nageshwar Mali, more than half of the neck of Kishori Mali was cut and he fell down unconscious. It is in the evidence of PW 2 and PW 3 that when Uma Devi (PW 9) came to save her husband, Kishori Mali, accused Nageshwar Mali gave a blow of sword on her, the blow hit her hand, back, head and shoulder and when the informant (PW 8) went forward to save his mother, accused Karu Mali assaulted him (PW 8) by means of sword on

his right hand. It is also in the evidence of PW 2 and PW 3 that Usha Devi, Rekha Devi and Shalbia Devi had assaulted the injured persons with *lathis*.

24. In the light of the evidence, which has come on record, let us, now, proceed to determine if the conviction of the accused-appellants is sustainable in the face of the evidence on record and the law relevant thereto.

25. We notice that so far as allegation against Karu Mali is concerned, no role is attributed to Karu Mali as regards assault on any one except on the informant. In other words, accused-appellant, Karu Mali, has been attributed the role of having given one blow by sword on the palm of the informant, Prakash Malakar (PW 8), causing injury on his palm, but it is highly absurd that when several blows are attributed to having been given by accused Nageshwar Mali, why accused Karu Mali, though armed with sword from the inception of the occurrence, gave only one blow on the informant (PW 8) and, that too, at the fag end of the occurrence.

26. We are, therefore, of the considered view that accused-appellant, Karu Mali, has been falsely implicated.

27. In the light of what has been pointed out above, the inference, which is irresistible to draw, is that the witnesses, who can go to the extent of implicating an innocent person alleging commission by him of an offence as serious as

murder, cannot be safely relied upon and, at any rate, their evidence, in the absence of corroboration from trustworthy and reliable evidence, cannot be made basis for conviction of even the accused-appellant, Nageshwar Mali.

28. The above inference gets strengthened from the fact that Shanti Devi, mother of the two accused appellants, was also implicated in the present case as a person, who had brought out two swords from her house and gave to both of his sons, namely, accused Nageshwar Mali and accused Karu Mali, one sword each, but the learned trial Court did not even frame charge against her and, as against the omission to frame charge against her, the prosecution did not agitate any further meaning thereby that the prosecution was also convinced that accused Shanti Devi was innocent.

29. The above unavoidably noticeable features of the case show that the genesis of the occurrence is seeped in untruth and half truth and, hence, the witnesses, who have gone to the extent of falsely implicating an innocent person alleging commission of an offence as serious as murder, cannot be readily relied upon and their evidence ought to have been rejected inasmuch as their evidence has not been corroborated by any independent evidence, direct or circumstantial.

30. Bearing, therefore, in mind that two innocent persons were sought to be implicated in an offence of murder, let

us proceed further with these appeals.

31. While considering these appeals, it needs to be also noted that there has, admittedly, been land dispute between the family of the accused and the family of the deceased, the injured persons being members of the family of the deceased Kishori Mali. Enmity is a double-edged weapon. While enmity may become cause for falsely implicating an accused, enmity may also form motive for commission of an offence.

32. When the relationship between an accused and a prosecution witness is inimical in nature, the evidence against the accused needs to be cautiously approached and minutely examined so as to avoid possibility of false implication and it is safer to err in acquitting an accused rather than err in convicting an innocent person. This rudimentary principle of criminal jurisprudence is of a great relevance, while appreciating evidence on record in the present appeals.

33. What needs to be noted before proceeding further is that the informant, Prakash Malakar @ Prakash Mali, has been examined as PW 8. He has proved the First Information Report as Exhibit-1. This First Information Report clearly shows that the information, so given by Prakash Malakar @ Prakash Mali, was recorded, at the place of occurrence, by the Officer In-charge, Rupau Police Station, as the *fardbeyan* of the informant,

meaning thereby that the police arrived at the place of occurrence and recorded informant's *fardbayan*, which has been treated as First Information Report.

34. Logically speaking, therefore, it was incumbent, on the part of the prosecution, to have proved as to '*what information*' had been received by the Officer In-charge, which impelled the police to reach to the place of occurrence.

35. Though the source of information may not have been insisted upon, it was the duty of the prosecution to bring on record as to '*what information*' had been received by the Investigating Officer, which impelled him to come to the place of occurrence. Here, again, there is no explanation, either offered by the prosecution or discernible from the materials on record, as to why the information, which had been received by the Investigating Officer, has not been brought on record.

36. The suppression of the initial information, given to the police, as regards the occurrence, constrains us to draw adverse inference against the prosecution, the inference being that had the names of the assailants were known, their names would have been disclosed at the first point of time; whereas there is nothing in the evidence on record to show that the names of the assailants of Kishori Mali were revealed to the police before the police arrived at the place of occurrence. This is a serious lacuna in the prosecution's case and since the

evidence on record does not fill up the lacuna, it is well-nigh impossible to hold that the prosecution's version of the occurrence, as unfolded by the First Information Report or at the trial, is true.

37. Coupled with the above, the injured, in the present case, are Chotan Mali (PW 7), Prakash Malakar @ Prakash Mali (PW 8) and Uma Devi (PW 9). All these injured are alleged to have been assaulted by accused Nageshwar Mali by means of sword. The doctor (PW 10), who had examined the said injured, has given the evidence with regard to injuries, which had been sustained by Uma Devi. The evidence of the doctor shows that while Uma Devi (PW 9) sustained three such injuries, which could have been caused by a sharp-edged weapon, such as, sword, she sustained, according to the doctor, two such injuries, one on her right scapular region and the other on her right elbow joint, which could have caused by a hard and blunt substance, such as, *lathi*. How Uma Devi (PW 9) had suffered injuries, which could have caused by a *lathi*, has not been answered at all by the evidence on record.

38. Similar is the position in the case of the medical examination of Chotan Mali (PW 7), who is shown to have sustained two wounds, which were caused by hard blunt substance, such as, *lathi*. When Chotan Mali (PW 7) was allegedly assaulted by only accused-appellant, Nageshwar Mali,

with sword and by none with *lathi*, how the injuries, which could have been caused by *lathi* and not by *sword*, were suffered by Chotan Mali (PW 7) has also remained unexplained by the evidence on record.

39. The ocular evidence on record, thus, do not show how the injuries by hard blunt substance were suffered by Chotan Mali (PW 7) and Uma Devi (PW 9) if they were really assaulted with sword by the accused Nageshwar Mali.

40. Moreover, according to the ocular evidence on record, Chotan Mali (PW 7) was given three blows by means of sword, but the injuries caused to him were found to be four. Two of these injuries have been caused by sharp-cutting weapon and the other two having been caused by hard blunt substance, such as, *lathi*.

41. Coupled with the above, the *post mortem* examination report shows that deceased Kishori Mali had sustained one incised wound on the back of the neck and another incised wound on the right side of his face. None of the prosecution witnesses, who have claimed to be eyewitnesses, has given evidence describing the occurrence, which could account for two blows by sharp cutting weapons having been sustained by the said deceased inasmuch as the evidence on record is that accused Nageshwar Mali gave one blow by sword with such severe force that it had almost severed the neck of the

said deceased.

42. Clearly, therefore, either the prosecution witnesses had not witnessed the occurrence of assault on the said deceased or they had given a colorized version of the occurrence. At any rate, they have not revealed to the Court the truth and the complete truth. Without knowing as to what the truth was and how the occurrence had taken place, who had assaulted whom and by what weapon, it was not only frightfully difficult, but too hazardous to have placed implicit reliance on the ocular evidence.

43. Because of the infirmities with which the ocular evidence suffer, we are clearly of the view that none of the witnesses could have been treated as a wholly reliable witness and even if the evidence of these witnesses are not rejected as evidence of wholly unreliable witnesses, these witnesses would, at best, fall 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 PW 3, 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 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 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 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 stigmatising it as unreliable."

(Emphasis is added)

48. At any rate, therefore, in the light of the evidence on record and the law relevant thereto, the accused-appellants deserve to be accorded, at least, benefit of doubt.

49. In the result and for the forgoing reasons, we allow these two 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.

50. Since accused-appellant Karu Mali is on bail, his bail bonds are hereby cancelled and his sureties shall accordingly stand discharged.

51. As the accused-appellant, namely, Nago @ Nageshwar Mali, is in custody, he is directed to be released forthwith if not required to be detained in connection with any other case.

52. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Court Records.

(Gopal Prasad, J.)

I. A. Ansari, J. : I agree.

(I. A. Ansari, J.)

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