

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1048 of 2009

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Kameshwar Prasad Yadav son of late Dukhan Prasad Yadav resident of Mohalla-
Parbatti, P.S.- University, Distt- Bhagalpur

.... Appellant

Versus

The State Of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Subodh Kumar Jha, Advocate
Mr. Pranav Kumar Jha, Advocate
For the Respondent/s : Md. Salauddin Khan, Spl. P.P.
Mr. Saurabh Kumar, J.C. to Spl.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

CAV JUDGEMENT

DATE: 29.06.2017

This appeal arises out of judgment of conviction dated 06.11.2009 and order of sentence dated 09.11.2009 passed in Sessions Trial No. 54 of 2007/T. R. No. 121 of 2009 by learned 7th Additional Sessions Judge, Bhagalpur by which the appellant was convicted under Sections 148, 302/149, 364/149 and 201/149 of the Indian Penal Code (for short 'IPC') and under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5000/- under Section 302/149 of the IPC and in default of payment of fine to undergo simple imprisonment for six months; rigorous



imprisonment for three years under Section 148 of the IPC; rigorous imprisonment for five years and to pay a fine of Rs.2000/- and in default of payment of fine to undergo simple imprisonment for three months under Section 364/149 of the IPC; rigorous imprisonment for five years and to pay a fine of Rs.2000/- and in default of payment of fine to undergo simple imprisonment for three months under Section 201/149 of the IPC; rigorous imprisonment for three years and to pay a fine of Rs.2000/- and in default of payment of fine to undergo simple imprisonment for three months under Section 27 of the Arms Act. The substantive sentences of imprisonment were directed to run concurrently.

2. This appeal had been heard by a Division Bench [**Coram: Dharnidhar Jha, J. and Ahsanuddin Amanullah, J.**], but the learned Judges were divided in their opinion expressed in the judgment dated 03.09.2015 on the result of the appeal. Hence, the learned Judges, vide their order dated 03.09.2015, referred the matter before the Hon'ble the Chief Justice for passing necessary orders. The matter has, thus, been referred to this Bench in terms of Section 392 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') and that is how this Bench has been called upon to decide, determine and adjudicate the appeal as mandated by



Section 392 of the Cr.P.C.

3. After hearing the parties and appreciating the evidence adduced during trial, vide judgment dated 03.09.2015, in the opinion of Justice Dharnidhar Jha (as he then was), the prosecution had failed to prove its charges and, hence, he had set aside the judgment of conviction passed by the trial court and directed the release of the appellant whereas learned brother Ahsanuddin Amanullah, J., differed with his opinion. According to him, no ground was made out for interfering in the judgment of conviction and order of sentence against the appellant and, thus, he dismissed the appeal holding the same to be devoid of any merit.

4. I have heard Mr. Subodh Kumar Jha, learned Advocate for the appellant and Mr. Salauddin Khan, learned Special Public Prosecutor for the State and carefully perused the materials available on record.

5. The Session trial in which the impugned judgment and order were passed relates to the First Information Report (for short 'FIR') that had been registered at 10.30 a.m., on 07.02.1990, in Kotwali (Tatarpur) Police Station under Section 154 of the Cr.P.C. in respect of an incident that had occurred at Mohalla Ashanandpur Parbatti situated at a distance of 3 km from



the Police Station on 24.10.1989 at about 3.30 p.m..

6. As per the written report submitted by the informant Nasiruddin (P.W.4) on 07.02.1990 addressed to the Superintendent of Police, Bhagalpur, on 24.10.1989, at about 3.30 p.m., a mob of 200 persons entered the lane near his house abusing persons of the Muslim community and exploding bombs. Upon hearing the hue and cry and sound of explosion when the informant came out, he saw that his son Md. Qayumuddin @ Qayum, aged about 15 years, had been caught hold of by the mob and the appellant Kameshwar Prasad Yadav opened fire at him due to which he fell down and started shouting. When the informant and others tried to save him, the rioters resorted to indiscriminate firing and some shots also hit the wall of his house. It is alleged that the mob dragged away the body of his son Md. Qayumuddin. The informant suspected that the mob might have thrown his body at some other place. He claimed that he could identify 10 persons by face out of the rioters and he knew only the appellant Kameshwar Yadav by his name because he belongs to his village and is known for his notoriety. It is also alleged in the written report that properties worth Rs.35,000/- was looted from a shop and properties worth Rs.15,000/- was looted from the shop of Md. Nasir of Mohalla- Ashanandpur and both



the shops were set on fire.

7. The reason for the delay in informing the police was attributed to imposition of curfew and fear of even going to the police station.

8. On the basis of the aforesaid information given to the police, a formal FIR, vide Kotwali (Tatarpur) P.S. Case No. 77 of 1990, was instituted under Sections 147, 148, 149, 379, 302/201/153B of the IPC, 27 of the Arms Act and 3 and 4 of the Explosive Substances Act against the appellant and 200 unknown miscreants and investigation was handed over to the Sub-Inspector of Police, namely, Mr. S.D. Singh by the order of the Officer-in-Charge of the police station.

9. On completion of investigation, the police submitted its report under Section 173(2) of the Cr.P.C. on 31.03.1990 holding the case to be true, but without any clue. The said police report was accepted by the learned Chief Judicial Magistrate on 24.06.2005 and the record of the case was directed to be deposited in the records room.

10. After 16 years of submission of final report, on 25.03.2006, a petition under Section 173(8) of the Cr.P.C. was filed on behalf of the prosecution in the court of Chief Judicial Magistrate, Bhagalpur seeking permission to investigate the case



further.

11. It was stated in the petition that the investigating officer had filed the police report without proper investigation and that some new facts are expected to surface in the case. It was further stated that the Director General-cum-Inspector General of Police, Bihar had also directed the Superintendent of Police, Bhagalpur to direct the Officer-in-Charge of the concerned police station to investigate the case further.

12. It would appear from perusal of the record that the learned CJM, Bhagalpur, vide order dated 28.07.2006, allowed the prayer made in the petition dated 25.03.2006 for further investigation of the crime and directed the police to investigate the case further.

13. On completing the further investigation of the case, the police submitted its further report under Section 173(2) of the Cr.P.C. in the court on 30.09.2006 whereby the appellant Kameshwar Yadav was sent up for trial for having committed the offence under Sections 147, 148, 149, 379, 364/201/153B of the IPC and 27 of the Arms Act.

14. On receipt of the further police report, the learned Chief Judicial Magistrate, Bhagalpur took cognizance of the offence on 07.10.2006 and committed the case to the court of



Sessions for trial on 10.01.2007.

15. On receipt of the record, the trial court framed charges under Sections 148, 379, 364/149, 302/149 and 201/149 of the IPC and 27 of the Arms Act against the appellant. As the appellant did not plead guilty, the trial commenced.

16. In course of trial, altogether nine witnesses were examined on behalf of the prosecution.

17. P. W. 1 Md. Javed stated in his deposition that on the date of occurrence while he was standing at the betel shop near Kali Asthan, Parbatti, he saw a procession armed with weapons coming from the direction of Nathnagar and moving towards Ashanandpur. He stated that Kameshwar Prasad Yadav, a member of the mob, was holding a gun. He stated that he came to his house and no untoward incident happened in his presence. In cross-examination, he stated that he went to his house from the betel shop itself, as his house is just behind Kali Asthan. He stated that the house of the accused Kameshwar Prasad Yadav is far away from his house.

18. P.W. 2 Md. Mohsin stated that the incident took place on 24.10.1989. He saw from betel shop at Parbatti Chowk that a procession was coming armed with weapons shouting 'Maro, Kato, Looto' and also hurling abuses. The accused



Kameshwar Prasad Yadav, being armed with gun, was leading the mob. He stated that after closing the shop, he ran away. He stated that he heard that Qayum and Munna were killed. He identified the appellant in the court. He stated that he did not see anyone killing the deceased Qayum and Munna. In cross-examination, he stated that his shop was set on fire. He came back to his house after two years of the incident. He said that he does not know whether the accused Kameshwar Prasad Yadav is resident of the same Mohalla. He stated that his statement was recorded about two months ago. It is relevant to note here that this witness had deposed in the court on 20.07.2007 whereas the alleged offence had taken place on 24.10.1989, which would mean that statement of this witness was recorded for the first time after 17 years of the occurrence.

19. P.W. 3 Md. Rasid stated that on 24.10.1989 while he was in his shop in the afternoon at Parbatti Chowk he heard slogan of 'Jai Sri Ram' and 'Jai Kali Maa'. He came out of his shop and saw that the accused Kameshwar Prasad Yadav was also present in the mob holding a gun. He stated that out of fear, he closed the shop and came back to his house. On query made by his father, he informed him that at about 3.30 p.m. when he came out upon hearing shouting of people, he saw that the



appellant Kameshwar Prasad Yadav was holding Qayum. Thereafter, when he moved forward 10 paces, he saw the appellant firing shot at Qayum. Then, he ran away and took shelter in Mohaddipur Madarsa. During cross-examination, he stated that the occurrence took place at a distance of 50 hands from his house near Ashanandpur lane. He further stated that everybody ran away to save their lives. He was not hiding behind anything. Later on, when he was targeted, he also ran away. At that time, only his father was behind him. He has denied the defence suggestion that he had given false evidence. He stated that his father had also seen the alleged occurrence.

20. P.W. 4 Nasiruddin is the informant of the case. He stated that his son Qayumuddin was killed at Parbatti Chowk at 03.30 p.m. on Tuesday. At that time, he was present at his residence. There was shouting outside and everybody was armed with sticks, spears, swords and guns. His son was rushing back to his house when the rioters caught hold of him and the appellant shot him. When firing and explosion of bomb started, he ran away to Mohaddipur. He stated that curfew was imposed. When he went to the police station, he was driven away. He got his statement written by one Javed and typed by one Muslim of Tatarpur and after putting his thumb impression, he sent it to the



Superintendent of Police. He stated that his statement was also recorded before the Magistrate. He stated that his shop was also burnt for which he had got compensation. He identified the appellant in the court. In cross-examination, he stated that there was no police personnel with the procession. He stated that he cannot say that after how many days, months or years, the police had taken his statement. He stated that he had seen Tatarpur Police Station which was at a distance of more than 1 km from his house and further that Kotwali Police Station was also more than 1 km away and for reaching Kotwali Police Station, Tatarpur Police Station will fall in the way. He stated that he does not remember the date when he first reported about the matter in the police station. However, he stated that he reported the police during the ongoing riot. He admitted that he had not stated before the Magistrate that the accused Kameshwar Prasad Yadav had shot his son. He stated that he made statement before the police twice. He also denied the defence suggestion that earlier the police had submitted final report in the case. He stated that his son Qayumuddin was coming from Parbatti Chowk. He reached there 15-20 minutes after his son was shot upon hearing the shouting. He further stated that the miscreants tried to shoot him too, but he ran away. He stated that the wall of his house traces



gunshots that were fired.

21. P.W. 5 Md. Khalil, a rickshaw puller, stated that he was carrying children on his rickshaw from St. Joseph school to Ashanandpur. He saw a mob armed with weapons. They were reciting slogans and the appellant was leading the mob. He further stated that he watched the mob from an extremely close distance. In cross-examination, he admitted that his statement was never recorded by the police during investigation. He denied the defence suggestion that no such incident had taken place.

22. P.W. 6 Md. Nesar is a formal witness, who stated that one Md Muslim typed the *fardbeyan* in his presence pursuant to the dictates of P.W. 4, which was read over to him and he had put his signature over it, which was marked as Ext. 1. He denied the defence suggestion that he had given false evidence.

23. P.W. 7 Girijanandan Sharma, Deputy Inspector General of Police, stated in his deposition that in Kotwali P. S. Case No. 77 of 1990 final police report had been submitted, which was reopened for investigation pursuant to the order passed by the Director General of Police, vide letter no. 38 dated 20.02.2006. He stated that by the same order, many other cases were also reopened for further investigation. He identified the signature of the then DGP on the said letter dated 20.02.2006,



which was marked as Ext. 2. He stated that thereafter the Superintendent of Police, Bhagalpur had issued Memo No. 916 dated 23.02.2006 directing for further investigation of the case. He stated that the reason for further investigation was that in past there were many shortcomings in the investigation. Even the statement of informant was not correctly recorded during investigation. The informant had submitted a protest petition. He further stated that the informant had told him that statements of witnesses were not recorded. He stated that after finding materials upon review, he had ordered for submitting charge-sheet in the case. In cross-examination, he stated that the reason for further investigation may be the superficial investigation conducted in the case earlier. He admitted that the further investigation was conducted after 17 years of the occurrence. In the meantime, many officers were posted at Bhagalpur, but no one had ever complained him. He admitted that during previous investigation, statement of Mr. M. K. Alam, a Magistrate was recorded. He stated that initially, one Binod Kumar was handed over the further investigation of the case. Subsequently, in his place one Javed Mahmood was made the investigating officer. He admitted that in the case-diary, there is no mention of the place of occurrence. In further cross-examination, he admitted that he



does not remember whether or not any recommendation was made for taking disciplinary action against the erring investigating officer. He denied the defence suggestion that he had ordered for re-investigation under pressure of the Government in order to secure his promotion to the post of Inspector General of Police.

24. P.W. 8 Javed Mahmood is the investigating officer of the case, who had investigated the case at a later stage and on completion of investigation had submitted charge-sheet before the court. He stated in his deposition that he took over the investigation of the case from the officer-in-charge of Tatarpur, namely, Binod Kumar on 21.06.2006. He stated that initial investigation was superficial. He stated that he inspected the place of occurrence and recorded the further statement of the informant. He stated that he also recorded the statements of Md. Mohsin, Md. Rasid, Md. Azam, Kalim, Md. Khalil, Md. Jainul, Md. Nasim and Md. Wasim in course of investigation. He stated that the informant was also sponsored by the police for recoding his statement under Section 164 of the Cr.P.C. before the Magistrate. He stated that he is in service since 1977 and had investigated several cases. He had conducted further investigation and not re-investigation of the case. He admitted that the



statement of the informant was recorded in the previous case-diary. He stated that even in the previous investigation, the case was supervised by the Superintendent of Police and on the basis of his opinion, the final police report was submitted. He stated that he had made no attempt to record the statement of the then Superintendent of Police. He admitted that in the previous investigation, statement of one M. K. Alam, a Supply Officer was recorded. He admitted that though the statements of witnesses were recorded by him, he did not mention in the case diary regarding the place where their statements were recorded. He admitted that during further investigation, he did not record the statement of Kameshwar Prasad Yadav, as he was absconding. He also admitted that statements of all the witnesses were recorded on the same day on 29.07.2006 and all the witnesses belonged to the same Mohalla. He also admitted that in paras 16 to 18 of the case-diary, he has recorded the joint statements of witnesses. He denied the defence suggestion that the investigation made by him was tainted and the charge-sheet was submitted in the case under pressure of the Government.

25. Another witness Rajeshwar Prasad Singh, who was examined during trial and was wrongly numbered as P.W. 8 has proved the formal FIR, which was marked as Ext. 3. He stated



that the formal FIR was drawn by one Pradeep Kumar. In cross-examination, he admitted that he had no occasion to work with aforesaid Pradeep Kumar. He also admitted that neither the FIR was drawn in his presence nor Pradeep Kumar had put his signature in his presence.

26. After closure of the prosecution case in order to enable the accused personally to explain the circumstances appearing in evidence against him, the trial court recorded his statement under Section 313 of the Cr.P.C. in which he has denied the charge and pleaded his innocence. He stated that he did not even know the deceased Md. Qayumuddin. He stated that he was implicated in the present case due to political vendetta.

27. Mr. Subodh Kumar Jha, learned advocate appearing for the appellant submitted that the oral testimonies of the witnesses examined on behalf of the prosecution are full of discrepancies, which completely erode their credibility. He submitted that from the testimonies of P.W.4 Nasiruddin and P.W.3 Md. Rasid it would be evident that neither of the two had witnessed the occurrence. He submitted that the testimony of the witnesses suffers from inconsistencies and there are also contradictions amongst the testimonies of the different witnesses making them wholly unreliable. He submitted that the



prosecution witnesses have made material improvement, exaggeration and embellishment and, thus, they deserve to be completely disbelieved.

28. He submitted that it is a case where the FIR was registered after three months and thirteen days and there is no plausible explanation for such an extra-ordinary delay. He stated that a false and fabricated case was set up by the prosecution and the appellant has been made a victim of a thoroughly tainted further investigation, which was conducted due to political bias after more than 16 years of acceptance of initial police report submitted in the court in which the appellant was found innocent. He submitted that in view of the law laid down by the Hon'ble Supreme Court in *Jai Prakash Singh vs. State of Bihar and Anr.* [(2012) 4 SCC 379]; *State of Himachal Pradesh vs. Gian Chand* [(2001) 6 SCC 71]; *Dilawar Singh vs. State of Delhi* [(2007) 12 SCC 641] and *Meharaj Singh vs. State of U.P* [(1994) 5 SCC 188], the trial court ought to have held the inordinate delay caused in institution of the FIR to be fatal and acquitted the appellant.

29. He submitted that the duty of investigating agency is to conduct fair, impartial and honest investigation and not to implicate an innocent person in a designedly defective



investigation. He submitted that indulging in fabrication of record undermines the public confidence reposed in the investigating agency. In this regard, he has placed reliance on a decision of the Supreme Court in *Jamuna Chaudhari & Ors vs. State Of Bihar [(1974) 3 SCC 774]*.

30. He contended that the initial investigation pursuant to which the first police report exonerating the appellant from the case was submitted was result of a fair and impartial investigation whereas the further investigation pursuant to which the appellant was charge-sheeted was a sham one, as the police officer, who had submitted charge-sheet clearly admitted that had he recorded joint statement of witnesses on the same day in the case diary and there is no mention of place of occurrence in the case diary or of the place where the statements of witnesses were recorded. He submitted that this clearly goes to show that the investigating officer had never ever visited the place of occurrence and had prepared the police report on the dictate of his superiors in the police department and political masters while sitting in his office in the police station.

31. He submitted that the witnesses examined on behalf of the prosecution are either related or interested and, hence, their testimonies cannot be relied upon. He further submitted that



several material witnesses including the Officer-in-Charge, who instituted the case and entrusted the investigation to the first investigating officer S.D. Singh, the first investigating officer S.D. Singh, who visited the place of occurrence and recorded the statement of witnesses, Mr. M. K. Alam, the Supply Officer-cum-Magistrate, whose statement was recorded by the first investigating officer and the witnesses, whose statements were recorded by Mr. Javed Mahmood (P.W.8) were not examined by the prosecution during trial and their non-examination has seriously prejudiced the case of the defence.

32. *Per contra*, Md. Salauddin Khan, learned Special Public Prosecutor for the State submitted that the evidences adduced by the prosecution are consistent and that there are no exaggeration or embellishment so as to affect its credibility. According to him, minor discrepancies cannot give rise to reasonable doubt. In this regard, he has placed reliance on the decisions of the Supreme Court in ***Mritunjoy Biswas Vs. Pranab @ Kuti Biswas and another [(2013) 12 SCC 796]*** and ***C. Muniappan & Ors. Vs. State Of Tamil Nadu [(2010) 9 SCC 567]***.

33. He submitted that the testimonies of eye-witnesses cannot be discarded by the Court on the ground that the witnesses happened to be relation or friend of the deceased. In this regard,



he has placed reliance on *Dayal Singh & Ors. vs State Of Uttaranchal [(2012) 8 SCC 263]*.

34. He submitted that non-examination of some of the witnesses is of no consequence, as there is no rule of law that prosecution must examine all its witnesses. He submitted that law does not require multiplication of evidence on each and every count.

35. He submitted that mere delay in lodging the FIR would not be fatal for the prosecution. For such proposition, he has referred to a Division Bench judgment of this Court in *State of Bihar Vs. Chunna Rajak [2005 (10) PLJR 357]* and of the Supreme Court in *Ravi Vs. Badrinarayan [2011(2) BBCJ- IV- 302]*.

36. He submitted that in the present case the incident being the result of communal violence in the town of Bhagalpur, the informant's first priority after loss of his son was to ensure safety of his own as well as other family members. He submitted that it is an admitted position that there was curfew in the town for a long time. Moreover, the informant had also stated in his testimony that he had gone to the police station, but he was driven away. He submitted that during the period of riot violence raged across the Bhagalpur district in which several persons were



killed and houses and properties were set on fire and, thus, the delay caused in institution of the FIR would be of no consequence.

37. He submitted that in the case like the present one, it is the duty of the court to maintain confidence of the public in judicial system and ensure that accused is punished and might and authority of the State are not used to shield him. In this context, he has placed reliance on a decision of the Supreme Court in *Zahira Habibulla H. Sheikh Vs. State of Gujarat [(2004) 4 SCC 158]*. He has also placed reliance on the decision of the Supreme Court in *Zahira Habibullah Sheikh (5) Vs. State of Gujarat [(2006) 3 SCC 374]* in order to emphasize that the proof of charge beyond reasonable doubt should depend on the totality of evidence and not by an isolated scrutiny.

38. He submitted that it is well established that the appellant was not only responsible for the killing of the informant's son, but he was also responsible for setting several shops on fire in the locality. He contended that once the witnesses were held to be reliable by the trial court, it would not be proper for the appellate court to presume a fact contrary to evidence. He submitted that since the occurrence took place near the house of P.W.3 and 4 with marks of bullet on the wall of their house, the



brother and father of the deceased (P.W. 3 and 4) are natural witnesses and their evidence cannot be brushed aside merely because they are related to the deceased.

39. In reply, Mr. Subodh Kumar Jha, learned advocate for the appellant submitted that in the cases of *Bijay Ray @ Bijay Mandal [Cr.Appeal (DB) No. 447 of 1991]* and *Bijai Mahto Vs. State of Bihar [Cr.Appeal (DB) No. 434 of 1991]*, which also relate to incidents, which took place in the Bhagalpur township during the relevant period, a Division Bench of this Court set aside the conviction and sentence awarded to the respective appellants giving them benefit of doubt and one of the grounds for doubting the prosecution case was the unexplained delay caused in institution of the FIR.

40. Having given my anxious consideration to the rival contentions and having carefully perused the evidence on record, in order to decide, determine and adjudicate the present appeal, it would be necessary to find out answers to the following questions:-

- (i) **Whether conviction can be based on the basis of evidence adduced by interested and/ or related witnesses ?**
- (ii) **Whether the contradictions and**



inconsistencies in the deposition of the material witnesses make out a ground for rejecting the prosecution case ?

(iii) Whether the delay caused in institution of the FIR is fatal to the case of the prosecution ?

(iv) Whether withholdment of material witnesses has caused prejudice to the case of the defence ?

(v) Whether investigation conducted by the police was tainted one making a ground for rejecting the prosecution version?

(vi) Whether the conviction recorded by trial court is required to be interfered with?

(vii) Whether the case against the appellant stands established beyond reasonable doubt ?

41. So far as the first question is concerned, the learned Special Public Prosecutor for the State has rightly placed reliance on the decision of the Supreme Court in *Dayal Singh* (supra).



There is no invariable rule that interested evidence can never form the basis of conviction unless corroborated in material particular by independent witness. Further, relationship is not the factor which affects credibility. The well settled principle of law is that the evidence of interested witness is to be scrutinized with care and caution. There is no hard and fast rule that the family members can never be true witnesses to the occurrence and that they will always depose falsely before the court. It is also well settled in law that a close relative, who is a natural witness, cannot be regarded as an interested witness having direct interest in having the accused somehow or other convicted. However, the duty of the court is to be cautious in appreciating and accepting the evidence of a related or an interested witness.

42. In order to examine the second question formulated herein above, let me scrutinize the evidence adduced during trial. The eye-witness account given by Nasiruddin (P.W.4), the informant, on a close scrutiny, becomes unbelievable. In cross-examination, he clearly admitted that he reached at the place of occurrence 15-20 minutes after his son was shot on hearing the shouting. If P.W.4 had reached 15-20 minutes after his son was shot, there was no occasion for him to be an eye-witness to the occurrence of either catching hold of his son or of his killing.



Another important thing, which would emerge from his evidence, is that in his deposition, he stated that he ran away, as the rioters fired on him also. Contradicting him, his son Md. Rasid (P.W.3) has stated that on seeing the procession reciting slogans, he closed his shop and came back to his house. On query made by his father, he informed him that at 03.30 p.m., when he came out of his shop, he saw that the appellant was holding Qayum and when he moved forward 10 paces, he saw that the appellant shot him. The statement of P.W.3 is not in alignment with the eye-witness account given by his father P.W.4. If he is to be believed, his father was not present when Qayum was shot.

43. Again, from yet another angle, when I look at the deposition of P.W. 3 and 4 together, I find that even P.W.3 cannot be relied upon. Though, the FIR was registered after three months and thirteen days on the basis of typed report submitted by P.W.4 Nasiruddin, the omission of name of his son P.W.3 Md. Rasid, as a witness to the occurrence in the FIR creates reasonable doubt about his presence at the time of occurrence near the place where Qayum was shot. The informant did not state in the FIR that Md. Rasid had witnessed the incident or that he was even present at the time of occurrence. Further, when I look to the deposition of P.W.3 Md. Rasid, I find that in his



examination-in-chief, he stated that on query made by his father, he narrated him about the incident, but then in cross-examination, he improved his case by saying that his father was also behind him and the witnesses, who were variously armed indiscriminately fired at them. Hence, he fled away and took shelter in Mohaddipur Madarsa. The statement of P.W.3 Md. Rasid is self-contradictory. In examination-in-chief, he stated that he narrated about the occurrence to his father at his residence whereas in cross-examination he stated that his father was just behind him and both of them had witnessed the occurrence. He stated that there was indiscriminate firing upon them and he ran away and took shelter in Mohaddipur Madarsa. The question arises that when he had taken shelter in Mohaddipur Madarsa, how his father enquired from him, who was present at his residence. Another question of relevance would be, if his father himself was a witness to the incident why did he ask about the incident from P.W.3. Md. Rasid. It is also surprising that P.W.3 did not receive any injury when a mob of 200 rioters were engaged in indiscriminate firing upon him from a close range. These factors clearly create reasonable doubt about the presence of P.W.3 at the place of occurrence.

44. In view of the discussions made above, I find that



the two eye-witnesses examined on behalf of the prosecution in this case have made material improvement, exaggeration and embellishment in their testimonies. There are also contradictions in their deposition, which make them wholly unreliable. The discrepancies, as highlighted hereinabove, in their evidence cannot be said to be minor discrepancies, as argued by the learned Special Public Prosecutor.

45. The learned Special Public Prosecutor for the State has placed reliance on the decision of the Supreme Court in *Mritunjoy Biswas* (Supra) in order to emphasise that minor discrepancies, omissions, contradictions, inconsistencies and embellishments can not be a ground to disbelieve the prosecution case. However, when I look at the ratio laid down in that case, I find that the same is of no help to the case of the prosecution. In that case the Supreme Court observed :

“It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. **The test is whether the same inspires confidence in the mind of the court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies.** It needs no



special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission (See *Leela Ram (dead) through Duli Chand v. State of Haryana and another* [(1999) 9 SCC 525], *Rammi alias Rameshwar v. State of M.P.* [(1999) 8 SCC 649] and *Shyamal Ghosh v. State of West Bengal* [(2012) 7 SCC 646].”

(emphasis mine)

46. As the testimonies of the two material eye-witnesses do not inspire confidence in the mind of the Court and the discrepancies and contradictions are serious, which go to the root of matter, in view of the decision of the Supreme Court in *Mritunjoy Bishwas* (Supra), they would certainly create a dent in the prosecution version.

47. The next question for consideration before this Court is :

Whether the delay caused in institution of the FIR is fatal to the case of the prosecution?

48. I find that though the alleged incident is said to have



occurred on 24.10.1989, at 3.30 p.m., and the witnesses examined in trial have stated that the police station was at a close proximity, the matter was reported to the police on 07.02.1990, i.e. after three months and thirteen days through the Superintendent of Police pursuant to which the FIR was instituted. Undoubtedly, the FIR was instituted after an inordinate delay. Though, the informant has taken a plea that on account of curfew and out of fear, he could not go to the police station to lodge the case and has also stated in his deposition that initially when he went to the police station he was driven away. From the evidence on record, it does not appear that curfew was imposed throughout for a period of 3 months and 13 days restricting the persons from going out of their home. There is also no evidence on record that the condition was so bad for over 3 months in the locality that no one could have visited the police station in order to institute FIR, or on refusal by the police to institute FIR, to go to the court and institute a complaint. There is also no corroboration to the evidence of the informant that he had gone to the police station and was driven away. The said fact has not even been mentioned in the FIR. In the FIR, the informant has vaguely stated that due to curfew and out of fear he could not go to the police station. Even in his deposition, he has failed to mention the date or time



when he visited the police station. He has not even uttered the name of the police station, which he visited and was driven out.

49. As noted above, the contention of the appellant is that inordinate delay caused in institution of the FIR is fatal to the case of the prosecution whereas learned Special Public Prosecutor has submitted that mere delay in lodging of the FIR would be of no consequence. He has strenuously argued that it is an admitted fact that during the period of riot violence had erupted across the Bhagalpur district in which several persons were killed and properties were looted and shops and houses were set on fire and there was curfew in the Bhagalpur town and thus the delay caused is properly explained.

50. Mr. Md. Salauddin Khan, learned Special Public Prosecutor appearing on behalf of the State referred to a Division Bench judgment of this Court in *State of Bihar Vs. Chunna Rajak* (Supra) in order to persuade the Court that in similar circumstances the Division Bench has taken note of the fact that due to curfew having been promulgated, there was delay in reporting the matter to the police. He has also drawn my attention towards decision of the Supreme Court in *Ravi Vs. Badrinarayan* (Supra) where the delay in lodging of the FIR was more than



three and a half months, the Supreme Court held that there can be variety of reasons in genuine cases for delay in lodging the FIR. The Supreme Court has held that unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned.

51. Relying on the decision of the High Court in *Chunna Rajak* (Supra) and of the Supreme Court in *Ravi Vs. Badrinarayan* (Supra), Mr. Md. Salauddin Khan has submitted that since it was a case of communal conflict in the township of Bhagalpur, the mere delay caused in lodging of the FIR would not be fatal to the case of the prosecution.

52. Having given my thoughtful consideration to the arguments advanced by Mr. Md. Salauddin Khan and the ratio laid down by the Supreme Court, as also by this Court in the judgments relied upon by him, I am not inclined to accept his argument.

53. In criminal cases the principles drawn from previous decided cases are meant to be used for proper appreciation of facts having regard to overall factual matrix of the case and not as mathematical formulae. It is a settled principle in law that a decision is an authority for what it actually decides. While



considering the ratio laid down in one case, it is always to be kept in mind that every judgment should be read, as applicable to the particular facts of that case and similarity of facts in one case cannot be used to bear in mind the conclusion of fact in another case.

54. In this context, I may refer to the following observation of the Supreme Court in *Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav & Anr.* [(2005) 2 SCC 42] :-

“While deciding the cases on facts, more so in criminal cases the court should bear in mind that each case must rest on its own facts and the similarity of facts in one case cannot be used to bear in mind the conclusion of fact in another case (See: [Pandurang and Anr. vs. State of Hyderabad](#) (1955 1 SCR 1083). It is also a well established principle that while considering the ratio laid down in one case, the court will have to bear in mind that every judgment must be read as applicable to the particular facts proved or assumed to be true. Since the generality of expressions which may be found therein are not intended to be expositions of the whole of the law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. A case is only an authority for what it actually decides, and not what logically follows from it. (See (1) *Quinn vs. Leathem* (1901 AC 495), (2) [State of Orissa vs. Sudhansu Sekhar Misra](#) (AIR 1968 SC 647) and (3) *Ambica Quarry Works Vs. State of Gujarat* (AIR 1987 SC 1073)...”



55. In view of the ratio laid down in the *Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav & Anr* (Supra), I am of the opinion that the decision of this Court in *State of Bihar Vs. Chunna Rajak* (Supra) and of the Supreme Court in *Ravi Vs. Badrinarayan* (Supra) relied upon by the learned Special Public Prosecutor appearing for the State would be of no help to the prosecution case, as the conclusions by the courts in those cases were based on the facts of those cases and the evidences adduced during trial, which are not identical in the present case.

56. At this stage, I may take note of the decisions of this Court in *Bijay Ray @ Bijay Mandal* (Supra) and *Bijai Mahto Vs. State of Bihar* (Supra) on which reliance has been placed on behalf of the defence. In these two cases, which also arise from Bhagalpur town relating to the same sequence of events with communal unrest, the Division Bench set aside the judgment of conviction considering the undue delay in lodging the FIR, as one of the grounds for doubting the prosecution case.

57. While referring to the importance of prompt institution of the FIR, in *Jai Prakash Singh Vs. State of Bihar and Anr.* (Supra), the Supreme Court observed as under:-

“12. The FIR in criminal case is a vital and



valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eye witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question. (Vide: Thulia Kali v. The State of Tamil Nadu, AIR 1973 SC 501; State of Punjab v. Surja Ram, AIR 1995 SC 2413; Girish Yadav & Ors. v. State of M.P., (1996) 8 SCC 186; and Takdir Samsuddin Sheikh v. State of Gujarat & Anr., AIR 2012 SC 37)."

58. In *State of Himachal Pradesh vs. Gian Chand*

(Supra), the Hon'ble Supreme Court emphasized the need of putting the court in its guard to search if any explanation has been offered for the delay as under :-

"12. Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. **Delay has the effect of**



putting the Court in its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case. ...”

(emphasis mine)

59. In *Dilawar Singh vs. State of Delhi* (Supra), the Hon’ble Supreme Court emphasized that delay, if unexplained, defeats the chance of unsoiled and untarnished version of the case as under :-

“9. In criminal trial one of the cardinal principles for the Court is to look for plausible explanation for the delay in lodging the report. **Delay sometimes affords opportunity to the complainant to make deliberation upon the complaint and to make embellishment or even make fabrications. Delay defeats the chance of the unsoiled and untarnished version of the case to be presented before the Court at the earliest instance. That is why if there is delay in either coming before the police or before the Court, the Courts always view the allegations with suspicion and look for satisfactory explanation.** If no such satisfaction is formed, the delay is treated as fatal to the prosecution case.”

(emphasis mine)



60. In *Meharaj Singh vs. State of U.P* (Supra), the Hon'ble Supreme Court emphasized the significance of prompt lodging of FIR and mentioning vivid details as under :-

“12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. **The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any.** Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story....”

(emphasis mine)

61. Thus, from the decisions noted above, one can safely say that mere delay in investigation of the FIR would not be a ground to discard the prosecution case, but if inordinate delay in lodging the FIR is not satisfactorily explained, the delay would be fatal to the prosecution.

62. Thus, while answering the aforementioned question, looking at the nature of evidence adduced during trial, I must state that the explanation submitted in the present case by the



informant for the delay caused in institution of the FIR does not inspire confidence and, hence, the delay has certainly made the prosecution case doubtful.

63. The next question for consideration is :

Whether withholdment of material witnesses has caused prejudice to the case of the defence ?

64. From the evidence on record, it would appear that in the present case, the prosecution has not examined Pradeep Kumar, the Officer-in-Charge of the police station, who had drawn the formal FIR and had entrusted investigation of the case to the first investigating officer. The prosecution has also not examined the first investigating officer, S.D. Singh, who had conducted the investigation and submitted the initial police report holding the case to be true, but without clue. The prosecution has also failed to examine Mr. Binod Kumar, who filed petition in the court seeking leave to investigate further and took up the further investigation after taking permission from the court. The learned Judicial Magistrate, who had recorded the statements of witnesses during investigation conducted by P.W.8 Javed Mahmood under Section 164 of the Cr.P.C. was also not examined during trial. In course of argument, it has been pointed out from the evidence on record that the initial police report was submitted under the



direction of the Superintendent of Police, who had supervised the case. Even he has not been produced before the court during trial. Further, P.W. 8, who had investigated the case partly and submitted charge-sheet under Section 173(2) of the Cr.P.C. after obtaining the order of the court has admitted during his deposition that he had recorded the statements of Md. Mohsin, Rasid, Md. Azam, Kalim, Md. Khalil, Md. Jainul, Md. Nasim and Md. Wasim under Section 161(3) of the Cr.P.C., but they have not been examined during trial. Furthermore, one M. K. Alam, who was a Supply Officer and was deputed as a Magistrate and whose statement was recorded during the initial investigation, as admitted by P.W. 8 Javed Mahmood, has also not been examined.

65. It has been submitted by the learned counsel for the appellant in course of argument that non-examination of the aforesaid material witnesses has seriously caused prejudice to the case of the defence. On the other hand, Mr. Md. Salauddin Khan, learned Special Public Prosecutor for the State submitted that their non-examination is of no consequence as there is no rule of law that the prosecution must multiply its evidence on each and every point.

66. In the above context, I must record that it is well-settled in law that non-examination of material witness is not



sufficient for discarding the weight of testimony available. However, if the witnesses are available and they are yet withheld and no explanation is given for their non-examination, in appropriate case, the court may draw adverse inference against a party shielding the witness in terms of Section 114(g) of the Indian Evidence Act.

67. At this juncture, I may note with profit a passage from *Habeeb Mohammad Vs. State of Hyderabad [AIR 1954 SC 51]*, wherein the Hon'ble Supreme Court observed : **“In this situation it seems to us that Biabani who was top-ranking police officer present at the scene was a material witness in the case and it was the bounden duty of the prosecution to examine him, particularly when no allegation was made that if produced, he would not speak the truth; and in any case, the court would have been well advised to exercise its discretionary powers to examine that witness. The witness was at the time of the trial in charge of the Police Training School and was certainly available. In our opinion, not only does an adverse inference arise against the prosecution case from his non-production as a witness in view of illustration (g) to section 114 of the Indian Evidence Act, but the circumstance of his being withheld from the court casts a**



serious reflection on the fairness of the trial....”

68. In the present case, it is the case of the prosecution that since the initial investigation was superficial, the requirement was felt for investigating the case further whereas the case of the defence is that the initial investigation was unblemished and the subsequent investigation after 16 years of submission of the police report which was duly accepted by the court was *mala fide*. I must record here that if it is a case of further investigation, the investigation carried out initially, which resulted in submission of first police report cannot be wiped out from the record. Thus, S. D. Singh, the investigating officer, who had conducted the investigation at the first instance was a material witness because the investigating officer had investigated the matter, recorded the statements of witnesses, went to the spot for the objective findings, prepared the case diary during investigation and after collecting the relevant materials, submitted his report in the form of ‘case true but without clue’, which was accepted by the court. His role as the first investigating officer of the case cannot be minimized in a criminal trial. Similarly, the Officer-in-Charge, who had drawn the FIR and Mr. M. K. Alam, who was a Magistrate at the relevant time and whose statement was recorded under Section 161(3) of the Cr.P.C. during initial investigation,



were also material witnesses. Similarly, Mr. Pradeep Kumar, the Officer-in-Charge, who had drawn the FIR and entrusted investigation to the first investigating officer and Mr. Binod Kumar, who took up further investigation first were also material witnesses. None of the aforesaid material witnesses were examined during trial. There is no explanation for their non-examination. There is also no explanation as to why Md. Mohsin, Rasid, Md. Azam, Kalim, Md. Khalil, Md. Jainul and Md. Kasim, whose statements were recorded during investigation, were not examined during trial. The Court would certainly draw an adverse inference against the prosecution under Section 114(g) of the Evidence Act, as their withholdment from the court without any explanation casts a serious reflection on the fairness of the trial. Thus, the question posed, herein above is answered in affirmative.

69. Let me examine now the fifth question :

Whether investigation conducted by the police was tainted one making a ground for rejecting the prosecution version ?

70. It is well settled in law that the investigation must be fair, impartial and without bias or prejudice. It must be dispassionate. A manipulated investigation or an investigation, which is *mala fide* and motivated, cannot lead to a fair trial. A



fair investigation would necessarily include a complete investigation, which would mean that the investigation ought to be conducted to look into all aspects by it in favour of the accused or against him. A fair trial is impossible if there is no fair investigation.

71. It is equally well settled that error, illegality or defect in investigation cannot have any impact on a criminal case unless miscarriage of justice is brought or serious prejudice is caused to the accused. If the investigation is illegal or suspicious, the rest of the evidence is required to be scrutinized with circumspection.

72. If a cognizable offence is committed, it is the duty of the police to institute an FIR. Law does not require that the FIR should always be instituted by the victim or his family members. It is unfortunate that the case of such magnitude went unreported for over three months especially when two police stations were situated hardly at a distance of 1 km, as would transpire from evidence of the witnesses. There is absolutely no clarity, as to how the incident took place. There is no evidence on record that any action was taken against any police personnel for negligence in discharge of official duties. Though, P.W. 7 and 8 have stated that initial investigation was superficial, they have not



thrown any light, as to how the initial investigation was superficial. When a pointed question was asked by the defence from the supervising officer P.W.7, as to whether any complaint was made regarding deficiency or negligence in investigation by any police officer posted in Bhagalpur, he categorically replied that no such complain was ever received. Be it noted that P.W.7 was D.I.G. of Police. If he was not aware about any negligence in investigation of the case, it is not known on what basis the case was reopened for further investigation. The manner in which the further investigation was conducted creates serious doubt about the intention of the police to investigate the case any further. The investigating officer admitted in cross-examination that he recorded the statement of all the witnesses on one day. When he was asked about the place/places where he recorded the statement of those witnesses, he answered that he does not remember where the statements of those witnesses were recorded. The investigating officer (P.W.8) has also admitted that he recorded joint statements of witnesses in the case diary. He has also admitted in his deposition that he did not mention about the place of occurrence in the case diary. The D.I.G. of Police, who supervised the further investigation, also admitted in his deposition that there is no mention of place of occurrence in the



case diary.

73. If this was the nature of further investigation, I am constrained to say that there was no genuine effort to unravel the truth and bring the real culprit to book rather an empty formality was done in the name of further investigation. There was absolutely no commitment and sensitivity on the part of the investigating agency. One does not know under what circumstances the case was reopened for further investigation. In that view of the matter, I am of the opinion that the further investigation conducted by the police does not inspire any confidence and, thus, no credibility can be attached to such perfunctory investigation.

74. Now let me take up the last question formulated hereinabove :

Whether the case against the appellant stands established beyond reasonable doubt ?

75. In order to appreciate the above question, it would be necessary to scrutinise the evidences led during trial. Since I have elaborately dealt with the deposition of P.W. 3 and 4, at this stage, I would consider the evidence of the rest of the prosecution witnesses.

76. I find that P.W.1 Md. Javed and P.W.2 Md. Mohsin



are hearsay witnesses on the point of killing of Md. Qayum. None of them has stated from whom they came to know about the death of Md. Qayum and Munna. P.W.1 Md. Javed has stated nothing except the fact that he had seen the appellant holding a gun on the day. In his examination-in-chief, he has stated that he went back to his house and nothing happened in his presence. The evidence adduced by P.W. 1 and 2 does not appear to be credible on account of the fact that their statements were recorded after 17 years of the institution of the FIR by the police. The evidence of P.W.5 Md. Khalil is also unreliable. In his deposition, he has categorically stated before the trial court that his statement was never recorded by the police during investigation. A witness, who has turned up for the first time before the court after lapse of 18 years cannot be relied upon specially in the background of the delayed FIR and perfunctory investigation. The other witnesses examined during trial like P.W.6 Md. Nesar and Rajeshwar Prasad Singh are formal in nature. Their evidence is of no assistance to the case of the prosecution. P.W.7 Girijanandan Sharma and P.W.8 Javed Mahmood are police officers. P.W. 8 had conducted last part of investigation of the case whereas P.W.7, the then D.I.G. of Police, had supervised the further investigation conducted in the case. I have already dealt with



their testimonies hereinabove and have found their role as police officers to be thoroughly unsatisfactory in investigating and supervision of the case.

77. In order to emphasize the fact that the prosecution has been able to prove its case beyond reasonable doubt, learned Special Public Prosecutor for the State has placed his reliance on the following observations of the Supreme Court in *Zahira Habibullah Sheikh (5) vs. State of Gujarat* (Supra) :-

“A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact in issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. **The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny.**”

(emphasis mine)

78. Learned Special Public Prosecutor for the State has strenuously argued that in a case where large number of innocent



people were killed in a communal riot and there was complete failure of State machinery to protect citizens and the initial investigation was conducted in a manner to help the accused, it is the duty of this Court to punish the accused in order to maintain confidence of the public in judicial system. In this regard, he has placed reliance on the decision of the Supreme Court in ***Zahira Habibulla H. Sheikh***'s case (Supra).

79. There is no absolutely no quarrel with the above propositions of law. However, in totality of the evidence (oral and circumstantial), as analyzed herein above, I am of the considered opinion that the prosecution has failed to prove the charges against the appellant beyond reasonable doubt.

80. The glaring reasons for doubting the prosecution case are as under :-

(a) The FIR was registered after three months and thirteen days and there is no plausible explanation for the same.

(b) The initial investigation made by the police did not support the culpability of the appellant in the present case.

(c) The further investigation was conducted by



the police after 16 years of acceptance of the initial police report submitted in the court in which the appellant was found innocent.

(d) The further investigation conducted in the case was perfunctory and defective.

(e) Several material witnesses were withheld by the prosecution during trial without offering any explanation in this regard.

(f) The testimonies of the witnesses suffer from material contradictions and inconsistencies, which goes to the root of the matter and makes the prosecution case incredible.

81. The only other question left to be answered herein is whether the conviction recorded by the trial court is required to be interfered with ?

82. Since I have already held that the prosecution has not been able to adduce credible evidence to inspire confidence of the Court to hold the appellant guilty, the judgement of the trial court cannot be sustained. While saying so, I may note with profit the following observations made by the Hon'ble Supreme Court in ***Rang Bahadur Singh and others Vs. State of U.P. [AIR 2000 SC 1209]***: “The time-tested rule that acquittal of a guilty



person should be preferred to conviction of an innocent person. Unless the prosecution establishes the guilt of the accused beyond reasonable doubt a conviction cannot be passed on the accused. A criminal Court cannot afford to deprive liberty of the appellants, lifelong liberty, without having at least a reasonable level of certainty that appellants were the real culprits.”

83. In view of the discussions made above, I am of the considered opinion that the conviction recorded by the trial court needs to be interfered with.

84. For the reasons aforementioned, with profound respect to the views expressed by learned brother Ahsanuddin Amanullah, J., I am unable either to agree with the findings or the conclusion reached by him in the judgment dated 03.09.2015. At the same time, I agree with the findings and conclusion arrived at by Justice Dharnidhar Jha (as he then was) whereby the appeal of the appellant has been allowed and the judgment of conviction and order of sentence passed by the trial court has been set aside.

85. Accordingly, the impugned judgment of conviction dated 06.11.2009 and order of sentence dated 09.11.2009 passed by learned 7th Additional Sessions Judge, Bhagalpur in Sessions Trial No. 54 of 2007/T. R. No. 121 of 2009 are hereby set aside.



The appellant is directed to be released forthwith, if he is not required in any other case.

86. The appeal stands allowed.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	AFR
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