

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.643 of 2013

Arising Out of PS.Case No. -71 Year- 2006 Thana -RAJAPAKAR District- VAISHALI(HAJIPUR)

- =====
1. Koka Rai @ Dinesh Rai Son Of Late Budhu Rai R/O Village-Bakarpur, P.S.-Rajapakar, District-Vaishali
 2. Ranjit Rai Son Of Late Singeshwar Rai R/O Village-Bakarpur, P.S.-Rajapakar, District-Vaishali
 3. Dhanjit Rai Son Of Late Singeshwar Rai R/O Village-Bakarpur, P.S.-Rajapakar, District-Vaishali
 4. Dippo Rai Son Of Saryug Rai R/O Village-Bakarpur, P.S.-Rajapakar, District-Vaishali
 5. Jai Narayan Rai Son Of Saryug Rai R/O Village-Bakarpur, P.S.-Rajapakar, District-Vaishali
 6. Suraj Rai Son Of Late Ram Pragas Rai R/O Village-Ahmadpur Bariyarpur, P.S.-Rajapakar, District-Vaishali

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ram Vilash Mahto
Mr. Kaushal Kishor
Mr. Manoj Kumar
Mr. Aziuddin

For the Respondent/s : Mr. S.N. Prasad

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 03-04-2017

This appeal is directed against the judgment and order dated 12.08.2013, passed by Shri Gajendra Prasad, learned Adhoc Additional District and Sessions Judge -V, Hajipur in Sessions Trial No. 11/2008, by which the appellants had been convicted under Section 307/149 Indian Penal Code as well as under Section 342 Indian Penal Code and were sentenced to undergo Rigorous



Imprisonment for a period of one year under Section 342 Indian Penal Code and further to pay a fine of Rs. 1,000/ each, in default thereof Simple Imprisonment of three months. Appellants had further been sentenced Rigorous Imprisonment of five years under Section 307/149 Indian Penal Code with fine of Rs. 2,000/- each, in default thereof Simple Imprisonment of six months. Both the sentences had been directed to run concurrently. Learned Trial Court had also directed that the above fines to be paid to the informant.

2. Prosecution case in short is that, P.W. – 4, Dharamnath Mahto, gave a fardbeyan on 11.06.2006 at 5.30. P.M. at Patna Medical College and Hospital (hereinafter referred to as "PMCH") before Sub-Inspector of Pirbahore police station that last night i.e. on 10.06.2006 at about 7 P.M., he had gone to attend the call of nature about 500 hundred yards away from his house, then co-villagers, namely, (i) Koka Rai @ Dinesh Rai (2) Singeshwar Rai, both sons of Budhu Rai (3) Ranjit Rai (4) Dhanjit Rai, both sons of Singheshwar Rai (5) Dippo Rai (6) Jai Narayan Rai, both sons of Saryug Rai and (7) Suraj Rai, son of late Ram Pragas Rai, surrounded him and started



saying that this was the right opportunity and Koka Rai told him that he had taken money and he would return the same, thus as to why he used to insult him in front of society by asking for money, on which, Singeshwar Rai told that this is the right opportunity to kill him even nobody would know about his murder as "Barat" of son of Suraj Rai was proceeding. Further prosecution case is that Koka Rai assaulted the informant on his neck by means of *Garasa* in order to kill him, which caused cut injury on his neck. Singeshwar Rai assaulted him on head by means of *Daabh* from which the informant sustained cut injury, Ranjit Rai and Dhanjit Rai assaulted him on his neck by Hasuli and as he tried to save himself from the said assault, it caused injury of his left scapular region (*Pakhura*) of the informant. Further, Dippo Rai and Jai Narayan Rai saying that he is still alive, assaulted him indiscriminately by means of bhalu on his back, right arm, waist and right hand. The accused-appellant Suraj Rai further told to kill him by cutting his neck.

3. The aforesaid fardbeyan was sent to Rajapakar police station, as the occurrence had taken place within the jurisdiction of the said police station, thereafter, Rajapakar



P.S. Case No. 71/06 dated 17.06.2006 came to be registered under Section 147, 341, 342, 324 and 307 Indian Penal Code and the police after investigation submitted charge-sheet against the accused persons and as such, the case was committed to the Court of Sessions, which ultimately transferred to the Court of Sri Gajendra Kumar, learned Adhoc Additional District & Sessions Judge -V, Hajipur.

4. It appears from the perusal of the impugned judgment that during pendency of trial of this case, one accused-appellant, namely, Singeshwar Rai died as such, the case was dropped against him.

5. Charges have been framed against the accused - appellants under Section 342 and 307/149 Indian Penal Code and learned Trial Court after trial convicted the appellants and sentenced them as stated above vide judgment and order dated 12.08.2013. Appellants have challenged the said judgment and order in the present appeal.

6. Learned counsel for the appellants has submitted that this is a case based on testimony of single eye-witness, who happens to be informant (P.W.4) and claims



to be injured and it will not be safe to rely on the testimony of single eye-witness unless corroborated by other evidence and in the present case, there is no corroboration of the testimony of P.W. 4, as prosecution had even failed to bring original copy of injury report on the record. In support of his contention, he has relied upon a Judgment of Hon'ble Apex Court in the case of **Vedivelu Thevar v. The State of Madras**, reported in **A.I.R. 1957 S.C. 614** and submitted that it has categorically been held by Hon'ble Apex Court, that conviction cannot be made on the basis of sole eye-witness unless corroborated by other evidence, which has further been upheld by another Judgment of Hon'ble Apex Court in the case of **Lallu Manjhi and another v. State of Jharkhand**, reported in **AIR 2003 SC 854**.

7. On the basis of the above-stated Judgment, learned counsel for the appellants submitted that conviction and sentences of the appellants should not be upheld as they rest on the testimony of single witness and in this case, informant-injured himself is only eye-witness and that too is not free from suspicion. It has also been argued that the prosecution has miserably failed to prove the motive



behind the said occurrence as none of the witnesses have stated about motive as stated by the informant in his evidence. It has also been argued that it has come in evidence that Koka Rai, had to return loan taken by him from informant (P.W. 4), and as the informant used to demand it in front of others, Koka Rai felt insulted and that is the cause of assault on informant (P.W. 4), but all appellants are not members of one family. As such there was no occasion for other accused-appellants except the said Kako Rai to assault the informant.

8. It has further been argued that there are contradictions between the evidence of P.W. 4 (informant) in the court and his earlier statement made before the police and even the I.O. has not been examined in this case, which has caused much prejudice to the defence. It has also been submitted that though it is alleged that appellants, namely, Dippo Rai and Jai Narayan Rai assaulted the informant indiscriminately by bhala, however no penetrating injuries were found on the person of the informant rather the injuries were said to be caused by sharp cutting weapon.

9. it is the case of defence that the informant used to



tease the sister of appellant –Ranjit Rai and on the date of occurrence also, he had gone to tease the said sister of appellant-Ranjit Rai by taking advantage of the fact that no male member is present in the house as they had all gone to attend the 'Barat' of son of appellant- Suraj Rai and he was caught and assaulted by ladies. Defence had also made suggestion to the informant (P.W. 4) regarding above defence case.

10. On the basis of the above submissions, learned counsel for the appellants has submitted that when the sole testimony of the informant is not free from doubt and also the I.O. has not been examined in this case, which has caused serious prejudice to the defence side, conviction and sentences of the appellants are bad and not sustainable in the eye of law.

11. Learned counsel for the State has submitted that argument of learned counsel for the appellants that sole testimony cannot be relied upon, has no legs to stand as each case depends on its own merit and in this case, testimony of P.W. 4 (informant/injured) has been corroborated by the medical evidence, the doctor found ten injuries on the person of informant – P.W. 4 and out of ten,



six injuries were found to be grievous in nature, which have been inflicted on head and other parts of the body and prosecution has proved the injury report Exhibit. 3.

12. In the background of above facts, let me examine the evidences adduced on behalf of the prosecution.

13. On behalf of the prosecution, 8 witnesses have been examined and they are: P.W. 1 - Devan Mahto, P.W. 2 - Anandi Devi, P.W. 3 - Santosh Mahto, P.W. 4 - Dharamnath Mahto (informant/injured), P.W. 5 - Alok Ranjan, P.W. 6 - Dr. Suryadeo Prasad Singh, P.W. - 7, Urmilla Devi and P.W. 8 - Shiv Shankar Sah. Out of these witnesses, P.W. 5, is Advocate's Clerk, who has proved Signature of Assistant Sub Inspector, Rajapakar police station on the formal F.I.R as Exhibit. 2. and P.W. 8, is also a formal witness, who has proved the signature of Sub Inspector, Rambalak Singh on the forwarding of fardbeyan as Exhibit - 4.

14. Apart from above, following documents have been admitted into evidence by the prosecution and they are: Exhibit. 1, fardbeyan, Exhibit. 2, signature on formal F.I.R, Exhibit. 3, carbon copy of injury report and Exhibit. 4, the signature of S.I. on the forwarding of fardbeyan.



15. On behalf of defence, one of the accused, namely, Suraj Rai, got himself examined as a witness and has proved the invitation card of marriage of his son, which was performed on 10.06.2006.

16. Now coming to the evidence of P.W. 4, who is the sole eye witness as well as informant/injured of this case, his evidence in chief shows that when he had gone to attend the call of nature about 500 yards away from his house, all the appellants surrounded him and Koka Rai told him that as he has taken money, he will return the same, why he used to insult him in front of society by asking for money. Thereafter, Singeshwar Rai told that this was the right opportunity to kill him as nobody would know about his murder as "Barat" of son of Suraj Rai was to proceed, upon which appellant-Suraj Rai, wrapped the mouth of informant by *Gamcha* and exhorted to kill him, Koka Rai then assaulted him by means of *Garasa* on his neck in order to kill him, which caused cut injury on head above neck of the informant (P.W. 4), Singeshwar Rai assaulted him on back portion of his skull by means of *Daabh* in order to kill him, causing cut injury to him, Ranjit Rai and Dhanjit Rai assaulted him on his neck and skull by Hasuli



and as he tried to save himself from the said assault, the same hit the skull and left scapular region (*Pakhura*). In the meantime, nephew of the informant started calling him and accused persons started to flee away from the place of occurrence, leaving the *Gamcha* of appellant- Suraj Rai. He has further stated that when he started screaming, appellant-Suraj Rai, exhorted to kill him as he is still alive and other accused-appellants, namely, Dippo Rai and Jai Narayan Rai, then assaulted him indiscriminately by means of bhala on his chest but when he tried to save himself from the said blow, the said assault went to cut his *Tarjani*. It is also the evidence of informant that Jai Narayan assaulted by Bhala on his neck, which hit him on his left scapula (*Pakhura*) and also on his neck. Thereafter, he became unconscious. Further his evidence in chief is that he has been taken to PMCH, Patna, where his statement was recorded by Sub-Inspector, Ram Balak Singh. He has proved fardbeyan as Exhibit -1.

17. Further This witness has been cross-examined at length and in para - 4, he has admitted that occurrence took place in the dark night. He has further stated in para - 5 to the Court's query that his house is situated at 500



yards from the place of occurrence and the house of accused persons –appellants were at distance of 100 yards from his house. In para – 7, this witness has stated that while he was returning after attending the call of nature and was about 400 yards away from his house, he saw the accused–appellants standing and when informant reached 10 to 20 yards from the appellants, he saw that appellants were variously armed, however, he did not make any effort to escape from there. His evidence also shows that accused–appellants did not assault him immediately. Para - 12 of his cross-examination shows that the accused persons came from six to seven families and they are separate in business and cultivation. His evidence in para - 15 further shows that after assault, he regained sense in the hospital. Further his evidence in para -16, shows that he was also invited in the marriage of son of appellant-Suraj Rai and music was going on at darwaza of Suraj Rai, where several persons were present. In para -17, he has stated that he knows Kavita, sister of appellant-Ranjit Rai and, thereafter, a suggestion was given to informant that he used to tease said Kavita, for which accused -appellants had warned him. In para 21 again, a suggestion has been



put to him that on the date of occurrence also, he had gone to tease the said sister of appellant-Ranjit Rai by taking advantage of the fact that no male members are present in the house as they had all gone to attend the 'Barat' of son of appellant- Suraj Rai and for that he was caught and assaulted by ladies and due to which, he had sustained injuries. However, this witness has denied the aforesaid suggestion.

18. So far other witnesses are concerned, P.W. 1 is the brother of the informant and he has stated in his evidence in chief that the occurrence is of 16.06.2006 and he had gone to the 'Barat' of son of appellant – Suraj Rai and after taking the 'Bhoj' (feast), he went towards the chowk. In the meantime, his brother P.W. 4, had gone to attend the call of nature and, thereafter, on hulla he came and saw his brother having injuries on his head, back and hand. He has further stated that as his condition was serious, he did not enquire as to who had assaulted him and, thereafter, he took him to Sadar Hospital, Hajipur, from where, he was transferred to PMCH, Patna, where statement of informant was recorded and at that time, P.W. 4, disclosed that the appellants had assaulted him due to the dispute with



regard to transaction of money between them after wrapping *Gamcha* in his mouth by *Garasa* and other weapons and the appellants left the place of occurrence assuming him to have died. In his cross-examination, he has stated that when he carried the injured to hospital, he did not disclose anything and further stated in para -6, that his statement was recorded after 15 days.

19. Further P.W. 2, is the bhabhi (sister in law) of informant-injured and has stated that on hulla, she went to the place of occurrence and saw cut injuries on the head of informant and, thereafter, he was taken to Sadar Hospital, Hajipur, from where he was referred to PMCH, Patna. In her cross-examination, she has stated that she could not say that as to who assaulted her "devar" and how he had received injuries.

20. P.W. 3, is also not an eye witness and he has stated that on hulla, he went to place of occurrence and saw the informant in injured condition and he was taken to Sadar Hospital, Hajipur. In his cross-examination, he stated that he knows Kavita, sister of appellant-Ranjit Rai.

21. P.W. 7, had stated in her evidence in chief that she saw the appellants assaulting the informant after



surrounding him near the orchard of Singeswar Rai and caused severe injuries to him. In her cross-examination, she had stated that P.W. 4-informant, is her devar. Further in para – 4, she has admitted that she had not seen the occurrence by her own eyes and on hulla, she heard about the occurrence and she could not say as to who assaulted her “devar”.

22. from the above, it is apparent that except one Santosh Mahto (P.W. 3), all other witnesses as regards occurrence are members of one family and further none of the witnesses are the eye witness of the occurrence. P.W. 2 and 3 have not named any of the appellants and though P.W. 1, named the appellants but he has stated that he came to know the names of the appellants, when statement of P.W. – 4, informant-injured was recorded by police in PMCH, Patna. P.W. -7 in her evidence in chief had stated about assault to P.W. 4, by the accused-appellants but in her cross-examination, she had admitted that she had not seen as to who assaulted P.W. 4,. Hence her evidence is not worthy reliable and convincing.

23. Considering the testimonies of the prosecution witnesses, following things are very much clear (i) none of



the witnesses are the eye-witness except informant (P.W. 4) nor the names of the appellants have been disclosed to them by informant (P.W.4) immediately after the occurrence (ii) none of the witnesses other than informant, has stated about the motive behind the occurrence. As such, this case rests on sole testimony of P.W. 4. The evidentiary value of the sole witness has been considered by Hon'ble Apex Court in the Judgment in the case of **Vedivelu Thevar v. The State of Madras** (supra), which is reproduced hereunder :-

"11. In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section [134](#) of the Indian Evidence Act has categorically laid it down that "no particular number of witnesses shall in any case be required for the proof of any fact." The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's 'Law of Evidence' - 9th Edition, at pp. 1100 and 1101, forbidding



convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in s. [134](#) quoted above. The section enshrines the well recognized maxim that "Evidence has to be weighed and not counted". Our Legislature had given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime had been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the



testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely :

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way - it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court, equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single



witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have, therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution.

24. The aforesaid proposition has further been upheld by hon'ble Apex Court in the case of **Lallu Manjhi and Another v. State of Jharkhand** (supra), wherein it was



held that :-

“The Law of Evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single witness, the Court may classify the oral testimony into three categories, namely (i) *wholly reliable*, (ii) *wholly unreliable*, and (iii) *neither wholly reliable nor wholly unreliable*. In the first two categories there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon testimony of a single witness.”

25. Now on the basis of aforesaid proposition of law, when testimony of P.W. 4, is examined, it appears that there are serious discrepancies in between his statement before police recorded in the fardbeyan and his evidence in court. He in his evidence in chief, has stated that appellant – Suraj Rai, first wrapped his mouth by *Gamcha*



and exhorted to kill him into pieces before participating in 'Barat' but there is nothing said about this in his fardbeyan. Similarly a contradiction has also been found that in his evidence, he has stated that on call by his nephew, the accused persons, started to flee away from the place of occurrence and the appellant-Suraj Rai without untying *Gamcha* from the mouth of the appellant, also started fleeing away and when the informant started crying, appellant - Suraj Rai again exhorted other accused persons-appellants to kill the informant as he is still alive. From perusal of fardbeyan, it appears that no such statement has been given by this witnesses in his first statement, which is the very basis of the case. All these discrepancies relate to manner of occurrence and hence vital to prosecution.

26. In this case, doctor has been examined as P.W. 6 and he has stated in his evidence that on 10.06.2006, he was posted in P.M.C.H. Patna and he examined the P.W. 4, at 12.30 P.M. (noon) and found altogether ten injuries on the person of the informant. He has described all the injuries in his evidence in chief and further stated that injury Nos. 1, 2, 3, 4, 5 and 6 are grievous in nature and



the rest are simple in nature and further stated that all the injuries were caused by sharp cutting weapon like *Farsa* and *Garasa*. This witness has been cross-examined and in para -4, he stated that *Bhala* always causes penetrating injuries and sharp cutting weapons cause incise wound. In para -6, he has stated that all the aforesaid injuries are incised, to mean that they are caused by sharp cutting weapons. This witness on his further cross-examination has stated that original injury report was not before him, it appears from his evidence that he has given evidence on the basis of Xerox copy of injury report, which has been marked by the Court as Exhibit. 3. even if objected by the defence. Learned counsel for the appellants argued that original injury report has not been produced before the Court, as such, whatever this witness has stated , he has stated on the basis of Xerox copy of injury report. This witness has stated that he had examined P.W. 4, informant on 10.06.2006 at 12.30 P.M. (noon), which appears to be strange as according to prosecution, occurrence took place in the evening at 7.00 P.M. on 10.06.2006. Exhibit. 3, Xerox copy of the injury report, which should not have been accepted by the Trial Court as the same is not



primary piece of paper i.e. primary evidence. No explanation has been offered by the prosecution with regard to original injury report. To my mind, non-production of original injury report is serious lapse on the part of the prosecution. Further, P.W. 4, has categorically stated that appellant Dippo Rai and Jai Narayan Rai, indiscriminately assaulted him by *Bhala* causing injuries on his person but P.W. 6, doctor has not found any *Bhala* injury on the person of informant (P.W. 4) and hence medical evidence does not fully corroborate the oral testimony of P.W. 4.

27. Apart from above, it would appear from fardbeyan Exhibit. 1, which is first version of informant that he was first taken to Sadar Hospital, Hajipur from there he was referred to PMCH, Patna for treatment. P.W. 1, brother of the informant (P.W. 4) has also stated the same thing. P.W. 2, P.W. 3 and P.W. 7 has also stated that injured was first taken to Sadar Hospital, Hajipur from there, he was referred to PMCH, Patna, but no piece of paper has been brought on record to show that he was first treated and examined at Sadar Hospital, Hajipur, nor any paper has been produced to show that he was referred by Sadar



Hospital, Hajipur to PMCH, Patna, this is also one of the vital circumstances, which goes to the root of prosecution case.

28. Next circumstances is that P.W. 4 has stated in his evidence that his nephew called him and then accused persons started to flee away but the said nephew of P.W.4, has not been examined by the prosecution in the present case.

29. Further circumstances in this case is non examination of I.O. as noticed above, there are some serious contradictions in between the statement of P.W. 4, given before the Court and in his fardbeyan and in his cross-examination, defence has drawn attention towards the same but I.O. has not been examined nor any explanation has been offered in this regard.

30. The above facts along with other facts show that had I.O. been examined in this case, defence, would have got an opportunity to cross-examine him with regard to place of occurrence and other facts also, as such, a serious prejudice has also been caused to defence due to non examination of I.O.



31. In the present case, prosecution has come with a case that as there was some money of informant, (P.W. 4) was due to appellant, namely, Kako Rai, for which the informant, P.W., 4 used to insult him in public and as such only to take revenge of the said insult, the present occurrence was caused to him. This fact does not get support from other witnesses, who are the family members of P.W. 4 and they have not stated about the aforesaid money transaction. Furthermore, accused- appellants came from different families and they are separate in their business and cultivation and in such a situation, it is difficult to accept as to why the others would indulge themselves in the affairs of appellant-Kako Rai in causing such an occurrence. All these facts creates a serious doubt so far motive as alleged by the prosecution is concerned. It further appears that so far appellant-Suraj Rai is concerned, there is no allegation of assault against him and only presence of this appellant has been stated at the place of occurrence. Further prosecution case has been developed by informant (P.W. 4) that appellant-Suraj Rai, wrapped mouth of the informant by *Gamcha*. It appears admitted even by P.W. 4, that on the alleged date of



occurrence '*Barat*' of the son of appellant-Suraj Rai, had to proceed and there was a *Bhoj* at his house, in which P.W. 4, was also invited. In such a situation, causing the occurrence as alleged by prosecution by appellant No. 4, and others creates a serious doubt, not only about the implication of the appellant but also on the manner of occurrence.

32. Apart from the above, there is an inordinate delay in lodging F.I.R. as occurrence is of 1.06.2006 at 7.00 P.M., and fardbeyan had been recorded on 11.06.2006 at 5.30 P.M. From the entire discussions made above, and circumstances as stated above, the evidence of P.W. 4, suffers from serious infirmities and discrepancies, which shows that evidence of P.W. 4 is not free from reasonable doubt, reliability and trustworthiness.

33. In view of the discussions set forth above, I am of the irresistible conclusion that prosecution has failed to prove its case beyond all reasonable doubts. Hence the judgment and order of conviction and sentence passed against the appellants is not sustainable in the eye of law. Accordingly, this appeal is allowed. Conviction and



sentence of the appellants are set aside.

34. As appellant no. 1, is in judicial custody, he is directed to be set at liberty forthwith, if not required in any other case. So far other appellants are concerned; as they are on bail, they are discharged from liabilities of their bail bonds.

35. Registry is directed to send a copy of Judgment along with records of the case to Trial Court, forthwith.

(Vinod Kumar Sinha, J)

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