

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.571 of 2015

Arising Out of PS.Case No. -185 Year- 2010 Thana -SAHPUR District- BHOJPUR

1. Umesh Ojha

2. Bagish Ojha Both son of Bikaramditya Ojha Resident of village - Semariya, P.S. Shahpur, District - Bhojpur (Ara)

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Prabhat Kumar Sharan,
Mr. Hemant Kumar Sharan,
Mr. Jayant Kumar Sharan, Advocates

For the State : Mr. Sujit Kumar Singh, APP

For the Informant : Mr. Sheoji Mishra, Advocate.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

Date: 26-06-2018

Both the appellants namely, Umesh Ojha and Bagish Ojha have been sentenced to undergo RI for 2 years as well as to pay fine of Rs. 2,000/- in default thereof, to undergo SI for 3 months additionally, under Section 385 IPC, and under Section 323 IPC, sentenced to undergo RI for 1 year as well as to pay fine of Rs. 1000/- in default thereof, to undergo SI for one month additionally, with a further direction to run the sentences concurrently vide judgment of conviction and order of sentences dated 22.08.2015 passed by 3rd Additional Sessions Judge, Bhojpur at Ara in Sessions Trial No. 360/2012.

2. PW-6, Ram Krishna Ojha filed a written report on 17.10.2010 at 5.40 PM alleging *inter alia* that on the same day at 6.00



PM while he along with deceased Awadhesh Ojha was sitting at his Darwaza lying at village-Semariya, Umesh and Bagish armed with pistol came and began to abuse. They further directed that in spite of being given sufficient time of one week to pay Rangdari, they have not obliged and on account thereof, they are not to be allowed to live. Then thereafter, they began to assault his brother Awadhesh with fists and slaps. They also assaulted him with stones, brick particles and during course thereof, caused murder of him. He raised alarm over which large number of villagers including Hira Lal Ojha, Manish Ojha, Sampat Ojha, Hari Krishna Ojha came whom the accused persons threatened showing pistols and then thereafter, they managed to escape therefrom. It has also been disclosed that Bagish Ojha is working as Traffic Police at Patna. Umesh Ojha is an accused relating to murder of Purnmasi Paswan. It has further been disclosed that they were demanding Rs. 1 Lac which, they were unable to pay.

3. After registration of Shahpur PS Case No. 185/2010, investigation commenced and after completing the same, charge-sheet was submitted against both the accused persons whereupon they both were proceeded with the trial for the offences punishable under Section-384 IPC as well as Section 302 IPC. However, by the judgment impugned, both the appellants have been acquitted under the aforesaid two Sections, however, found and held guilty for the



offences punishable under Sections 323 IPC as well as 385 IPC and for that, have been sentenced, subject matter of the instant appeal.

4. Defence case as is evident from the mode of cross-examination as well as statement of both the accused recorded under Section 313 CrPC is that of complete denial. It has further been submitted that both the parties are agnates and till today partition by metes and bounds have not taken place, on account thereof, the parties are continuing with the land dispute whereupon, been falsely implicated leveling false and frivolous allegations. It has further been pleaded that deceased, Awadhesh Ojha had no male issue whereupon, was inclined to gift his property amongst his two daughters which was resisted by the informant, his brother. The appellants vigorously opposed the activity of the informant which happens to be another compelling circumstance for getting them involved in this false and concocted case just to facilitate smooth way in getting the property left by the deceased, Awadhesh Ojha. Furthermore, it has also been pleaded that Awadhesh Ojha, the deceased was approximately 80-85 years of age, met with a natural death but, out of malice and grudge converted the aforesaid theme as criminal action. However, the appellants could not adduce defence on that very score save and except the documentary evidence to suggest inter se origin.

5. The prosecution in order to prove its case had



examined altogether 10 PWs who are PW-1, Ram Shankar Ojha, PW-2, Manish Ojha, PW-3, Hira Lal Ojha, PW-4, Hari Krishna Ojha, PW-5, Sampat Ojha, PW-6, Ram Krishna Ojha, PW-7, Hira Lal Ojha, PW-8, Raj Kumar Ojha, PW-9, Hare Krishna Mandal and PW-10, Dr. Akhtar Hussain Ansari. Side by side had also exhibited Ext-1 series, signature of respective witnesses, endorsement over written report, written report, Ext-2, Formal FIR, Ext-2/A, endorsement, Ext-3, Inquest report, Ext-4, Charge-sheet, Ext-5, PM report.

6. In likewise manner, defence had also exhibited Ext-A series, Khatian. However, no oral evidence has been adduced.

7. While assailing the finding recorded by the learned lower court, it has been submitted on behalf of the appellants that falsity of the prosecution case is found duly exposed right from its inception which has properly been considered by the learned lower court whereupon, acquitted the appellants for the offences punishable under Sections 302 as well as 384 IPC but, while convicting the appellants in a manner as indicated above, the learned lower court swayed with the prosecution version narrated by the same witness who have been found to be unreliable, uncreditworthy. In its continuity, it has been submitted that it is not a fit case wherein *falsus in uno falsus in omnibus* is found applicable because of the fact that the manner whereunder all the witnesses came forward, showed



their interestedness being close to the prosecution party who were even inconsistent over demand of *Rangdari*. In the circumstance, the evidences on the score of demand of *Rangdari* became disband which the learned lower court should have also considered in its right perspective and, had there been, would not have resulted in having the judgment of conviction and sentence.

8. It has also been submitted that improbability of the case is further found exposed as, it has been alleged at the end of informant that he along with Awadhesh Ojha were at the Darwaza when the accused persons came but, indulged only with Awadhesh Ojha sparing the informant, moreover, having common interest is another circumstance. Prosecution version relating to case of murder was disbelieved in the background of inconsistency in between the medical evidence as well as the ocular evidence, then in that circumstance, case under Section 323 IPC would not have been inferred as PW-10 had not found any kind of ante-mortem external injury over the deceased. In likewise manner, none of the prosecution witness succeeded in their stand so far demand of *Rangdari* is concerned.

9. Contrary to it, it has also been submitted that witnesses had admitted that deceased, Awadhesh Ojha had two daughters. They were not knowing with regard to their frequent visits.



They have also deposed that after death of Awadhesh Ojha, informant Ram Krishna Ojha possessed over the property left by the deceased. As the learned lower court, which is evident from the judgment impugned, completely ignored the aforesaid improbability probalizing the defence version, on account thereof, finding recorded by the learned lower court happens to be unsustainable in the eye of law.

10. On the other hand, learned APP along with learned counsel for the informant have submitted that irrespective of the status of the appellants, they are ruffians and are not at all in a mood to spare their own family members, *gotias* and that happens to be the reason behind murder of Awadhesh Ojha when he failed to oblige them to pay *Rangdari* to the tune of Rs. 1 Lac. It has also been submitted that the learned lower court had minutely gone through the evidences available on the record whereupon the judgment impugned did not attract interference. As such, this appeal sans merit and is accordingly, fit to be dismissed.

11. From perusal of the judgment it is evident that learned lower court had taken a peculiar methodology wherein instead of considering the evidence of the PWs in its entirety, picked up certain lines that too from examination-in-chief without caring the cross-examination and the materials having been exposed during



course thereof. The activity of the learned lower court suggests that he had already made up his mind under what Section the appellants are to be convicted and picked up the selected portion only to justify the same. Being original court, such activity is found contrary to the spirit of law, more particularly, violating mandate of Section 353 as well as 354 of the CrPC. Further, the evidence denotes not only the examination-in-chief rather cross-examination and re-examination if any. That means to say, whenever there happens to be consideration of evidence, it should be examination-in-chief as well as cross-examination. Accordingly, office is directed to serve upon the P.O. concerned to be duly acknowledge himself with the requirements for good judgment, otherwise may request the Director, Bihar Judicial Academy, Patna for getting tutorial over how to write judgment.

12. From the evidence available on the record, it is evident that the deceased was taken to Shahpur Hospital where he was declared dead. From the inquest report (Ext-3), it is apparent that no external injury has been found during course of preparation of the same. In likewise manner, from Ext-5, Postmortem report, it is evident that no external injury was seen. Doctor, PW-10 had found surface stripped with blacks and for that, prosecution failed to attract his opinion on that very score whether it was on account of assault or on account of old age.



13. Now coming to ocular evidence, PW-1 during course of examination-in-chief had stated that on the alleged date and time of occurrence while he was at the Darwaza of Sudeshwar Baba, had seen Bagish and Umesh being armed with pistol came at the Darwaza of Awadhesh Ojha, scolded him over non payment of Rs. 1 Lac as Rangdari which was declined by Awadhesh as a result of which, they both began to assault Awadhesh with fists and slaps. Ram Krishan Ojha (informant) who was present there began to raise alarm whereupon people began to assemble. Then thereafter, both of them pelted stones and then, on the pretext of fire arm succeeded in their escape. They had taken victim to Shahpur Hospital where he was declared dead. It has also been divulged that both the accused persons are criminals. They have brutally assaulted their own father. They have committed murder of Purnmasi Paswan. Awadhesh Ojha was aged about 75-80 years. Accused persons were knowing since before that on account of old age he was fragile, even then assaulted in such a manner costing his life. In para-9, he had stated that at that very time more than 20-25 persons have assembled at the Darwaza of Awadhesh. House of Awadhesh stood ten steps away from the house of Sudeshwar. In para-11, he had admitted that Ram Krishna Ojha was looking after affairs of Awadhesh. Then there happens to be cross-examination with regard to *inter se* relationship. In para-22, he



had stated that he was not knowing the demand of *Rangdari* made on behalf of accused since before the occurrence. He had come across the news of demand of *Rangdari* on the date of occurrence itself. In para-23, he had further admitted that Ram Krishna Ojha happens to be head of the family. In para-24, he had further stated that he has got no information whether the accused persons have demanded *Rangdari* from any other person or not in the village. He had further stated at para-26 that he is not knowing whether the daughters of Awadhesh, namely, Lilawati and Taramuni used to visit the place or not as he had not seen them visiting the village. He had further stated that he does not go to the Darwaza of Awadhesh though he used to pass through the lane. In para-27, he had stated that he came across the news with regard to demand of *Rangdari* on 17.10.2010 itself. Save and except the aforesaid event, he had not heard with regard to demand of *Rangdari* by these accused persons from anybody in the village or in the surrounding of village. In para-28, he had further stated that he heard from his ear that accused persons were saying that one week time was given to pay Rs. 1 Lac but, the same has not yet been paid. When such demand was made by the accused, at that very time, only he along with Awadhesh and accused persons were present. At para-29, 30, there happens to be cross-examination over assault by fists and slaps as well as by brick particles. He had further stated that on his



alarm, Hira Lal Ojha, Sampat, Sidheshwar, Munna and others came who disclosed regarding occurrence. Then had shown ignorance at para-35 with regard to the fact that accused Umesh had already been acquitted relating to murder case. Then had denied the suggestion that as accused persons were supporting interest of daughters of Awadhesh, on account thereof, they have been falsely implicated in this false and frivolous case.

14. PW-2 had stated that on the alleged date and time of occurrence he was at the Darwaza of Sidheshwar Ojha and then, he narrated the event. Then had stated that on account of assault, Awadhesh died. After death of Awadhesh, Hira Lal, Sidheshwar and others came. Then had stated that at the time of assault Sidheshwar and Hira Lal were not present. When he had gone to intervene, he was thrashed by appellant, Bagish Ojha. Then thereafter, he raised alarm whereupon Dhanji and others came, seeing whom, the accused persons fled away. Awadhesh was taken to hospital where he was declared dead. In para-4 of his cross-examination, he had stated that the house of Bagish Ojha lies contiguous north to the house of Awadhesh. In para-6, he had stated that he along with informant as well as deceased were/are sharing common house. In para-7, he had stated that Awadhesh have got only daughters. In para-8, he had admitted that Ram Krishna and Awadhesh were not separate. In para-



9, he had further admitted that successor of deceased Awadhesh is not his daughters rather son of Ram Krishna. In para-10, he further stated that till the life time, Awadhesh was Karta of his family and after his death, Ram Krishna. In para-11, he had stated that he was acknowledged with the fact of demand of *Rangdari* by the accused persons, by Ram Krishna Ojha about a week ago. In para-13 he had stated that he had not inquired from Awadhesh. In para-14, he had stated that accused persons came near Awadhesh and then threatened as to why he had not paid *Rangdari* then, began to assault with stones, brick particles which was kept there since before. He had seen sign of injury over the neck only. Then had stated Sampat Ojha, Ram Krishna Ojha, Hare Krishna were there to prevent Awadhesh. Then had denied the suggestion that as the accused persons were taking side of daughters of Awadhesh, on account thereof, they have been falsely roped in this false and concocted case.

15. PW-3 had stated that on the alleged date and time of occurrence while he was going to Daya Baba Asthan and reached near house of Awadhesh Ojha, heard sound of Ram Krishan Ojha whereupon he along with Sampat came at the Darwaza of Awadhesh where Maar-peet was going on. Bagish and Umesh were indulged in assaulting Awadhesh with fists and slaps. When Awadhesh fell down then, both of them left the place. During course thereof, Umesh was



armed with pistol. Then thereafter, they took Awadhesh to hospital. Awadhesh died of assault. He had further stated that who was assaulting whom, he had not seen as there was crowd. Then had disclosed that Ram Krishna had divulged that on account of non payment of Rs. 1 Lac as *Rangdari* so demanded by the accused persons, this occurrence has been committed by them. During cross-examination at para-5, he had admitted that Awadhesh had got only two daughters. In para-6, he had stated that Ram Krishna Ojha happens to be head of the family. In para-8, he had further stated that he had not seen who was assaulting whom on account of crowd having been assembled there.

16. PW-4 had stated that on the alleged date and time of occurrence while he was in a way to Durga Puja Mela, he heard alarm whereupon he came at his Darwaza where seen Umesh and Bagish over the chest of Awadhesh and were assaulting with fists and slaps. When he protested, they have disclosed that for the last 15 days they were demanding Rs. 1 Lac which has not been paid by him, so, he will be murdered and then thereafter, they murdered by way of assaulting Awadhesh. He tried to intervene whereupon, Bagish threatened with pistol. On hue and cry raised by him, so many persons assembled seeing whom both the accused fled away. Deceased was taken to the hospital where he was declared dead. Then had stated that



accused persons had got bad character and are always indulged in committing loot. In para-3, he had further stated that on hue and cry, so many persons including Ram Kishun, Sampat came. Identified the accused. During cross-examination at para-7, he had admitted that his grand-father as well as father of Ram Krishna Ojha were full brothers. They are residing in a common house. Then had stated that daughters of Awadhesh used to come. In para-10, he had stated that Ram Krishan happens to be the head of the family. In para-15, he had stated that after hearing hue and cry, he came at his Darwaza where he found presence of a large number persons. Awadhesh was lying. He had not gone to Shahpur carrying Awadhesh. In para-17, he had stated that his statement was not recorded by the police.

17. PW-5 is Sampat Ojha. He had stated that on the alleged date and time of occurrence he along with his brother Awadhesh was sitting at his Darwaza. At that very time, Bagish and Umesh came and demanded Rs. 1 Lac as *Rangdari* whereupon Awadhesh declined to pay. Being annoyed therewith, they began to assault him by brick particles, stones and during course thereof, sustained injuries over testicle as a result of which, he died. On hue and cry raised by him, people assembled including Sri Kant, Ram Narayan, Sidheshwar, seeing whom, accused persons fled away. Then thereafter, Awadhesh was taken to hospital where he was declared



dead. At para-4, he had admitted Awadhesh to be his cousin brother. He had further admitted that land has not yet been partitioned. Awadhesh was the head of the family. Then had stated that Rangdari was demanded from him also two days prior to the occurrence. He had instituted the case at the police station. Police came after murder. Then corrected as at the time of occurrence itself, Rangdari was also demanded from him over which Awadhesh said that it will not be paid. At para-7, he had further stated that accused persons had not demanded Rangdari either from him or from any villagers since before the occurrence. In para-8, he had stated that Awadhesh fell down from cemented chair as a result of which, sustained injury over his head. In para-11 there happens to be contradiction.

18. PW-6 is the informant who had deposed that on the alleged date and time of occurrence while he along with his brother was sitting at his Darwaza, Umesh and Bagish came and said to Awadhesh that in spite of repeated demand of *Rangdari* of Rs. 1 Lac, he failed to pay the same, so he is not to be allowed to live. Then thereafter, both of them began to assault Awadhesh with fists and slaps as a result of which, he fell down. Then thereafter, they pelted stones as well as brick particles whereupon, he raised alarm attracting Raj Kumar Ojha, Hari Lal Ojha, Hari Kishun, Manish, Ram Sagar, Sampat, Hira Lal seeing whom the accused persons after brandishing



fire arm as well as making fire in the air left the place. Then thereafter, they took Awadhesh to Hospital where he was declared dead. Exhibited written report, protest petition, inquest report. Then had disclosed that the occurrence has been committed on account of demand of *Rangdari*. In para-7, he had admitted Umesh and Bagish to be his *pattidar*. In para-10, he had stated that he came to know from Awadhesh with regard to demand of Rs. 1 Lac as Rangdari by the accused persons. In para-12, he had further stated that he was not knowing whether demand of Rangdari was made prior to aforesaid event. In para-14, he had stated that he is not knowing whether the accused persons had demanded *Rangdari* from any of the villagers. In para-15, he had stated that Umesh has been acquitted relating to a case of murder of Purnmasi Ram. At para-16, he had stated that he protested over demand of *Rangdari*. At that very time, accused as well as Awadhesh were in front of each other at the distance of 5 ft. from him. In para-17 he had disclosed that he had not tried to intervene into the matter as his leg was fractured but he raised alarm. In para-18-19 he had stated that Awadhesh was assaulted while he was sitting and then he fell down to the ground. On fall, Awadhesh had not sustained injury. People came after the occurrence whom he disclosed about the occurrence. At para-32, he had stated that Awadhesh had two daughters who were not present at the village but, after being



informed came. Then had denied the suggestion that as he had tried to encroach upon the share of daughters of Awadhesh and during said course, the accused persons took their side, on account thereof, they have been falsely implicated. Awadhesh died of natural death on account of old age.

19. PW-7 is Hira Lal Ojha son of Chirkut Ojha who had stated that on the alleged date and time of occurrence he was at the door of Sona Ojha wherefrom he had seen Umesh and Bagish came and asked for Rs. 1 Lac as *Rangdari* from Awadhesh and for that, scolded him. On protest made by Awadhesh, they assaulted with fists and slaps whereupon he rushed. They scolded Umesh and Bagish whereupon Bagish took out pistol and threatened to kill. He raised alarm attracting the villagers seeing whom, the accused persons fled away. Then thereafter, Awadhesh was taken to hospital where he was declared dead. During cross-examination at para-5, 6 and 7, he had stated that Bagish had assaulted Awadhesh from front side while Umesh from back side as a result of which he fell down. He rushed and then raised alarm attracting so many persons seeing whom the accused persons escaped therefrom. In para-9, he had admitted presence of case against him including others lodged by Bagish.

20. PW-8 had deposed that on the alleged date and time of occurrence, he was at his house. After hearing hue and cry he



came at the Darwaza of Awadhesh and had seen Umesh and Bagish assaulting with fists and slaps, legs after pushing him from the chair. They were also possessing fire arm and on the pretext of which, succeeded in their escape. Then thereafter, they had taken Awadhesh to Hospital where he was declared dead. Exhibited written report. During cross-examination at para-3, he had stated that after hearing hue and cry 7-8 persons conjointly reached at the place of Awadhesh. Alarm was raised by Ram Krishna Ojha. When he reached at the place of occurrence, Awadhesh was being assaulted by the accused persons who were armed with pistol and then fled therefrom. Then had shown ignorance with regard to institution of a case. Then on court's question, he had stated that he had not mentioned the fact that first of all, he had scribed the written report and then it was copied by Pramod Ojha and in likewise manner, Pramod also failed to divulge the same. Pare-14-15 is the contradiction.

21. PW-9 is the Investigating Officer who had stated that on the date of alleged of occurrence at about 5.00 PM, 8-10 persons came carrying a dead body who disclosed the deceased to be their brother and further, has been murdered. Written report was filed by Ram Krishna Ojha whereupon Shahpur PS Case No. 185/2010 was registered under Section 302/34 IPC. Exhibited the relevant document including formal FIR, inquest report, took up investigation, during



course thereof, recorded the statements of the witnesses, send the dead body for postmortem, inspected the place of occurrence which happens to be *Dalan* of informant lying at village, Semaria Patti. He had further stated that near the Chowki kept at verandah of the Darwaza, 25-30 brick particles were found. Furthermore, its location suggests having been thrown from the gate (southern side). Then had identified the boundary. Then had disclosed that near Darwaza of Narain Ojha, half brick particles were staked and after having been closely observed found some particles lifted therefrom. Just behind *Dalan*, house of accused persons lies. Adjacent south to the accused persons, house of informant lies. Further he disclosed that house of Mukhiya lies at the distance of 500 yards north-west therefrom. He had prepared sketch map. In para-7, he had further stated that in para-23 of the case diary, he had incorporated the fact that when he returned back from the place of occurrence, Chowkidar, Chhathi Lal Paswan returned back after postmortem examination of the deceased and disclosed that he had seen Mukhiya, Baikunth Ojha and Bagish at Sadar Hospital, Ara who were talking with the doctor who had conducted postmortem examination. In para-8 he had further stated that he received calls from Mobile Nos. 9525699986, 9473340717, 9122165639. Caller had disclosed his identity as Bagish from Patna who had disclosed that Ansari Saheb had already scripted postmortem



report. Viscera has been preserved. So, get the same examined by Forensic Laboratory. In para-10, he had further stated that he requested Sadar Hospital to send viscera to FSL for examination. Received the supervision note. He had not received the viscera report. Accordingly, after completing investigation, submitted charge-sheet. In para-15, 16 of his cross-examination, he had stated that he had not inquired from the hospital whether the deceased was taken to the hospital, examined by the doctor and was declared dead. Though, it happens to be 1 Kilometer from PS. Then had denied the suggestion that coming in collusion with the prosecution party, this case has been registered under Section 302 IPC. In para-24, he had stated that seeing the brick particles at the place of occurrence, suggests commission of occurrence. He had not seized brick particles as disclosed in para-32. In para-34, he had stated that he had not tried to verify the caller's identity nor he procured call details. He received postmortem report which was issued by the medical board. Then had denied the suggestion that his investigation is faulty.

22. From the evidence available on the record, it is apparent that all the prosecution witnesses are inconsistent with each other, not only with regard to their arrival at the Darwaza of the Awadhesh rather with regard to presence of others including that of informant, Ram Krishna Ojha, PW-6. It is true that it is the quality not



the quantity which matters and that happens to be reason behind presence of Section 134 of the Evidence Act discarding the number to be required for proving the fact in issue. That means to say, evidence of a single witness if found reliable, is to be accepted, admitted and conviction could be recorded thereupon. In likewise manner, principle of *falsus in uno falsus in omnibus* is not at all found applicable. But, the sole question happens to be whom to rely. As each of the witness has discarded presence of other and narrated the story as per their own way more or less inconsistent to each other. Then in that circumstance, identifying one of them to be reliable witness, appears to be risky. Furthermore, there happens to be no evidence on record to suggest that the deceased Awadhesh Ojha who was taken to Shahpur PHC was really examined by a doctor who declared him to be dead in the background of the non submission of prescription, if any, issued by the doctor relating to examination of deceased, Awadhesh Ojha nor OD slip was sent to the police station nay PW-9, Investigating Officer had contacted with the doctor during course of investigation. It has got relevancy because of the fact that apart from assault having by fists and slaps, there also happens to be an allegation that deceased was assaulted by brick particles which, during course of evidence of the doctor, PW-10, is found completely contradicted.

23. When the evidene on the score of demand of



Rangdari is taken up, is found again suffering from the same kind of infirmities. In *Machindra v. Sajjan Galfa Rankhamb* reported in (2017) 13 SCC 491, it has been held as follows:-

“14. On perusal of the record, it has further been noticed by us that there was six days' delay in lodging the FIR which remained unexplained throughout the trial and in the appeal before the High Court. One last fact which is imperative and crucial to be mentioned here is that opinion on the cause of injuries was neither mentioned by doctor PW-6 in his deposition, nor in post-mortem report. In criminal cases pertaining to offences against human body, medical evidence has decisive role to play. A medical witness who performs a post-mortem examination is a witness of fact though he also gives an opinion on certain aspects of the case. This proposition of law has been stated by this Court in *Smt. Nagindra Bala Mitra and Vs. Sunil Chandra Roy & Anr.*, 1960 SCR (3) 1, as follows:

“43.the value of a medical witness is not merely a check upon the testimony of eye witnesses; it is also independent testimony because it may establish certain facts quite apart from the other oral evidence. If a person is shot at a close range, the mark of tattooing found by the medical witness would draw that the range was small, quite apart from any other opinion of his. Similarly, fractures of bones, depth and size of the wounds would show the nature of the weapon used. It is wrong to say that it is only opinion evidence; it is often direct evidence of the facts found upon the victim's person.”

15. Further it was observed in the case of *State of U.P. Vs. Krishna Gopal & Anr.*, (1988) 4 SCC 302, in the following words :

"24. It is trite that where the eye-witnesses' account is found credible and trustworthy, medical-opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses, as Bentham said, are the eyes and ears of justice. Hence the importance and primacy of the orality of the trial-process. Eye-witnesses' account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other



evidence, including medical-evidence, as the sole touch-stone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be credit- worthy; consistency with the undisputed facts; the 'credit' of the witnesses; their performance in the witness-box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation."

16. But looking at the post-mortem report, cause of injuries was not stated nor was any opinion formed to create independent testimony. We would like to emphasize on the vital role played by opinion of the expert which is simply a conclusion drawn from a set of facts coming to his knowledge and observation. Expert's opinion should be demonstrative and should be supported by convincing reasons. Court cannot be expected to surrender its own judgment and delegate its authority to a third person, however great. If the report of an expert is slipshod, inadequate or cryptic and information on similarities or dissimilarities is not available in the report of an expert then his opinion is of no value. Such opinions are often of no use to the court and often lead to the breaking of very important links of prosecution evidence which are led for the purpose of prosecution. Therefore, we are of the considered opinion that the prosecution has failed to prove that death was caused due to the injuries inflicted by the recovered weapons.

24. In *Darbara Singh v. State of Punjab* as reported in (2012) 10 SCC 476, it has been held as follows:-

"10. So far as the question of inconsistency between medical evidence and ocular evidence is concerned, the law is well settled that, unless the oral evidence available is totally irreconcilable with the medical evidence, the oral evidence would have primacy. In the event of contradictions between medical and ocular evidence, the ocular testimony of a witness will have greater evidentiary value vis-à-vis medical evidence and when medical evidence makes



the oral testimony improbable, the same becomes a relevant factor in the process of evaluation of such evidence. It is only when the contradiction between the two is so extreme that the medical evidence completely rules out all possibilities of the ocular evidence being true at all, that the ocular evidence is liable to be disbelieved. (Vide: [State of U.P. v. Hari](#), (2009) 13 SCC 542; and [Bhajan Singh @ Harbhajan Singh & Ors. v. State of Haryana](#), (2011) 7 SCC 421).”

25. In the case of *Sanjay Khanderao Wadane v. State of Maharashtra* as reported in (2017) 11 SCC 842, it has been held as follows:-

“13. A medical witness who performs a post-mortem examination is a witness of fact though he also gives an opinion on certain aspects of the case. The value of a medical witness is not merely a check upon the testimony of eyewitnesses; it is also independent testimony because it may establish certain facts quite apart from the other oral evidence. From the evidence on record, inferences are drawn as to the truth or otherwise of the prosecution case in criminal matters and truth or otherwise of a claim in civil matters. In this process, the medical evidence plays a very crucial role. If there is inconsistency or discrepancy between the medical evidence and the direct evidence or between medical evidence of two doctors, one of whom examined the injured person and the other conducted post mortem on the injured person after his death or as to the injuries, then in criminal cases, the accused is given the benefit of doubt, and let off. Where the direct testimony is found untrustworthy, conviction on the basis of medical evidence supported by other circumstantial evidence can be done, if that is trustworthy.”

26. In *Bhagwan Jagannath Markad v. State of Maharashtra* reported in (2016) 10 SCC 537, it has been held as



follows under paras-18, 19, and 20:-

18. It is accepted principle of criminal jurisprudence that the burden of proof is always on the prosecution and the accused is presumed to be innocent unless proved guilty. The prosecution has to prove its case beyond reasonable doubt and the accused is entitled to the benefit of the reasonable doubt. The reasonable doubt is one which occurs to a prudent and reasonable man. [Section 3](#) of the Evidence Act refers to two conditions – (i) when a person feels absolutely certain of a fact – “believe it to exist” and (ii) when he is not absolutely certain and thinks it so extremely probable that a prudent man would, under the circumstances, act on the assumption of its existence. The doubt which the law contemplates is not of a confused mind but of prudent man who is assumed to possess the capacity to “separate the chaff from the grain”. The degree of proof need not reach certainty but must carry a high degree of probability[Vijayee Singh v. State of UP (1990) 3 SCC 190]

19. While appreciating the evidence of a witness, the court has to assess whether read as a whole, it is truthful. In doing so, the court has to keep in mind the deficiencies, drawbacks and infirmities to find out whether such discrepancies shake the truthfulness. Some discrepancies not touching the core of the case are not enough to reject the evidence as a whole. No true witness can escape from giving some discrepant details. Only when discrepancies are so incompatible as to affect the credibility of the version of a witness, the court may reject the evidence. [Section 155](#) of the Evidence Act enables the doubt to impeach the credibility of the witness by proof of former inconsistent statement. [Section 145](#) of the Evidence Act lays down the procedure for contradicting a witness by drawing his attention to the part of the previous statement which is to be used for contradiction. The former statement should have the effect of discrediting the present statement but merely because the latter statement is at variance to the former to some extent, it is not enough to be treated as a contradiction. It is not every discrepancy which affects creditworthiness and trustworthiness of a witness. There may at times be exaggeration or embellishment not affecting credibility. The court has to sift the chaff from the grain and find out the truth. A statement may be partly rejected or partly accepted[Leela Ram v. State of Haryana,



(1999) 9 SCC 525]. Want of independent witnesses or unusual behavior of witnesses of a crime is not enough to reject evidence. A witness being a close relative is not enough to reject his testimony if it is otherwise credible. A relation may not conceal the actual culprit. The evidence may be closely scrutinized to assess whether an innocent person is falsely implicated. Mechanical rejection of evidence even of a 'partisan' or 'interested' witness may lead to failure of justice. It is well known that principle "falsus in uno, falsus in omnibus" has no general acceptability[Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381]. On the same evidence, some accused persons may be acquitted while others may be convicted, depending upon the nature of the offence. The court can differentiate the accused who is acquitted from those who are convicted. A witness may be untruthful in some aspects but the other part of the evidence may be worthy of acceptance. Discrepancies may arise due to error of observations, loss of memory due to lapse of time, mental disposition such as shock at the time of occurrence and as such the normal discrepancy does not affect the credibility of a witness.

20. Exaggerated to the rule of benefit of doubt can result in miscarriage of justice. Letting the guilty escape is not doing justice. A Judge presides over the trial not only to ensure that no innocent is punished but also to see that guilty does not escape.[Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381]

27. Considering the evidence in its totality as well as after proper evaluating the same, it is found and held that prosecution has miserably failed to substantiate its case. Consequent thereupon, judgment of conviction and order of sentence recorded by the learned lower court is, hereby, set aside. Appeal is allowed.

28. Since appellants are on bail they are discharged from the liability of bail bond.

(Aditya Kumar Trivedi, J)

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