

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.526 of 2015**

Arising Out of PS.Case No. -82 Year- 1998 Thana -ISHOPUR District- BHAGALPUR

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Pradeep Kumar Kejriwal @ Pradeep Kejriwal, S/o Late Gopal Kejriwal, R/o Village Barahat (Ishipur), P.S. Ishipur Barhara, Distt. Bhagalpur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Pravin Kumar Sinha-Advocate

Mr. Pramod Kumar-Advocate

For the Respondent/s : Mr. Sujit Kumar Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 23-04-2018

Appellant Pradeep Kumar Kejriwal @ Pradeep

Kejriwal has been found guilty for an offence punishable under Section 307 of the I.P.C. and sentenced to undergo R.I. for five years as well as to pay fine appertaining to Rs.5,000/- and in default thereof, to undergo S.I. for three months, additionally, under Section 342 of the I.P.C. and sentenced to undergo R.I. for six months, under Section 27 of the Arms Act and sentenced to undergo R.I. for three years with a further direction to run the sentences concurrently vide judgment of conviction dated 10.07.2015 and order of sentence dated 16.07.2015 passed by the 4th Additional Sessions Judge, Bhagalpur in Sessions Trial No.616 of 1999.

2. PW-4 Vijay Kumar Tibrewal alias Laddu while was in an injured condition at his house where police official (PW-10)



arrived on being informed and recorded fard-bayan having an allegation that on the same day, he had gone to the house of Arjun Sharma wherefrom he was returning at about 2.30-2.45 p.m. to his house. As soon as he reached at the Northern corner of house of Kaviraj Bidya Narayan Shashtri, Pradeep Kumar Kejriwal and Parmanand Kejriwal along with their associate, who were hiding since before, came out. Out of them, two had caught hold his hand from behind while Pradeep Kejriwal shot at over his left temporal region, another shot was made by Permanand Kejriwal over his chest. He had also fired another round over his face. On his hue and cry, his wife, son along with others rushed towards scene seeing whom, the accused persons ran away towards western direction. Then thereafter, his wife and son took him to his house. He had further disclosed that his family members as well as one Vijay Kumar Yadav of village-Kamalchak had seen the occurrence. He had further disclosed that Pradeep Kumar Kejriwal happens to be renowned criminal and times without number, he had gone to Jail. He had further disclosed that his mother Chhedi Devi, sister Renu @ Munni and Vijay Kumar Kejriwal had conspired to eliminate him so, that they be able to grab his land.

3. After registration of Pirpaiti (Ishopur Barahat) P. S. Case No.82 of 1998, investigation was taken up and after concluding the same, chargesheet has been submitted facilitating the trial meeting with ultimate result, subject matter of instant appeal.



4. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. It has further been pleaded that accused Pradeep Kumar Kejriwal is the husband of sister of informant namely Renu @ Munni and as mother of informant namely Chhedhi Devi had gifted her share to Renu Devi, on account thereof, informant taking the police in his collusion, got this case filed. However, neither ocular nor documentary evidence has been adduced in defence.

5. In order to substantiate its case, prosecution had examined altogether ten PWs, who are PW-1 Arjun Sharma, PW-2 Munu Kuar Tekriwal, PW-3 Usha Devi, PW-4 Vijay Kumar Tibrewal alias Laddu, PW-5 Arjun Khetan, PW-6 Nakul Jha, PW-7 Mita Nand Sharma, PW-8 Ashok Kumar Sinha, PW-9 Rakesh Ram and PW-10 Ratan Kishore Jha. Side by side, had also exhibited as Exhibit-1, signature of informant over fard-bayan, Exhibit-2, fard-bayan, Exhibit-3, injury report. As disclosed hereinabove, defence had not adduced ocular or documentary evidence.

6. While assailing the judgment of conviction and sentence, it has been urged on behalf of learned counsel for the appellant that from the evidence available on the record, it is apparent that this case has been hatched up at the instance of informant without having any kind of occurrence committed against him. To substantiate such plea, it has been submitted that at an initial stage, the informant



had alleged that two unknown persons have caught hold him while the appellant as well as Parmanand Kejriwal shot at. Appellant had shot at over temporal region while Parmanand Kejriwal had shot at two places, the first one over chest and second one over face. During course of evidence, informant had given cleanchit to Permanand Kejriwal. He had not claimed Permanand Kejriwal to be his assailant that means to say, the manner of occurrence has changed that means to say, presence of appellant to be one of the assailant has become doubtful. So, on account of infirmity persisting in the evidence of informant himself, the learned lower Court would not have convicted the appellant.

7. It has also been submitted that out of ten witnesses, PW-10 is the I.O., PW-4 is the informant. PW-2 and PW-3 are the son, wife of the informant. Remaining witnesses that means to say, independent witnesses counting PW-1, PW-5, PW-6, PW-7, PW-8 and PW-9 have not supported the case of the prosecution. Now, coming to the evidence of PW-2 and PW-3, it has been submitted that they too are not an eye witness to occurrence. They themselves deposed that at the time of occurrence, they were inside the house and after hearing the sound of firing, they came out and then, seeing informant in an injured condition, rushed, lifted, taken to his house. So, whatever they deposed, happens to be hearsay evidence. So, the evidence of PW-4, informant, only remains.



8. With regard to reliability of PW-4, it has been submitted that he happens to be suffering from malice and grudge. In the background of the fact that there happens to be an admission at the end of the PW-2, PW-3, PW-4 that there was dispute amongst the family members with regard to the properties possessed by the father of the informant (father-in-law of the appellant) and after death of father-in-law, mother-in-law/ mother of the informant had gifted the property in favour of wife of the appellant/ caused grievances to the informant and in the aforesaid background, the appellant has been roped in. To justify such submission, it has been submitted that there happens to be reason behind that neither the original injury report nor presence of doctor has been procured during course of trial. The learned lower Court without examining the doctor on its own, marked exhibited the photo copy/ attested injury report, which ought not to be in the background of the fact that paraphernalia for the same as required under the Evidence Act, has not been performed. Moreover, on account of non-examination of the doctor, the contents of injury report could not be taken into consideration. So, the finding of learned lower Court with regard to injury is not at all permissible in the eye of law.

9. In its continuity, it has also been argued that though for attracting Section 307 of the I.P.C. neither nature of injury, nor the presence of injury is relevant. That means to say, the intention of the



accused or the knowledge while indulged in an action, in case costing the life of the victim, is the crux, which the Court is required to search out during course of adjudication of an offence whether the same satisfies the charge under Section 307 of the I.P.C. That being so, to gather whether appellant had got an intention and under such intention, he had shot at causing injury over delicate part of body of informant was to be perceived, which in the facts and circumstances of the case, having laches at the end of the prosecution, could not be taken into consideration and that being so, as there happens to be no allegation that any other kind of activities were taken up during course of commission of alleged occurrence, did not attract its application. That being so, none of the Sections whereunder the appellant has been found guilty and sentenced for, is found duly substantiated. Therefore, the appeal is fit to be allowed.

10. On the other hand, learned Additional Public Prosecutor while supporting the finding recorded by the learned lower Court has submitted that irrespective of the fact that learned lower Court had acted, for the argument sake, illegally by accepting the injury report (Exhibit-3), but there happens to be consistent evidence at the end of the informant (PW-4) that at the time of commission of the occurrence, appellant was armed with pistol and he shot at over temporal region of the informant. So, pistol a deadly weapon and having aimed at delicate part of body causing injury, which is found



substantiated and that being so, the learned lower Court had rightly inferred applicability of Section 307 of the I.P.C. along with Section 27 of the Arms Act, which is found to be fit for concurrence. It has also been submitted that when the evidence of I.O. (PW-10) is gone through, it is apparent that during his examination-in-chief, he tried to give some undue advantage to the appellant, but same found to be gutted down in the background of the fact that during course of examination, they themselves cross-examined from the PW-10, who had deposed that he had incorporated in the topography of the P.O. that blood was there, that substantiate the place of occurrence and further, manner of assault.

11. Coming to the nature of witnesses having been examined at the end of the prosecution, it is apparent that PW-1, PW-5, PW-6, PW-7, PW-8 and PW-9 have not supported the case of the prosecution, whereupon they were declared hostile. It is also manifest from the L. C. Record that doctor has not been examined. It is also apparent from the L. C. Record that prosecution had taken sincere effort in procuring the duplicate/ attested injury report as original was not available and the same has been received by the prosecution, sent by the hospital duly attested, was produced before the Court and on that very basis, vide order dated 26.05.2015, same was allowed to be an exhibit of the record and so, marked as Exhibit-3.

12. Gone through the order dated 26.05.2015 and after



perusal of the same, it is evident that it did not justify the requirement of Evidence Act, more particularly Section 63(2) of the Evidence Act. That being so, the admission of the document as Exhibit-3 is not at all found to be in accordance with law and in the aforesaid background and in the background of the fact that prosecution had not brought on record the evidence that treating doctor was dead or his presence was not at all feasible, the contents thereof, would not be admissible as prosecution failed to substantiate the requirement as provided under Section 32 of the Evidence Act.

13. That being so, neither Exhibit-3 could be read in evidence nor the contents thereof, could be relied upon. Be that as it may, during course of consideration of applicability of Section 307 IPC, the Court has to consider the nature of weapon used, manner whereunder the same has been used, the nature of weapon by which offence has been allegedly been committed, motive for the crime, severity of the blow and the part of body where injury is inflicted. Furthermore, the act which amount to attempt under this Section must be one which is capable causing death. In order to amount an attempt under this Section that the act must be such that if not prevented or interrupted it would be sufficient to cause death. So, the activity having at the end of the accused is to be seen during course of commission of alleged offence irrespective of the fact whether hurt has been caused or not during course thereof. That happens to be



reason behind presence of Section 307 I.P.C. bifurcated under two parts, the first one where no hurt is caused, and the latter one whereunder hurt is caused commanding prescription of two kinds of punishment.

14. Now evidence is to be seen whether the same happens to be sufficient to fulfill the aforesaid criteria. In this way, while the evidences have been taken into consideration, it has been found that PW-1, PW-5, PW-6, PW-7, PW-8, PW-9 have not supported the case of the prosecution and on account thereof, they were declared hostile. Whosoever remains is the own family members, that means to say, PW-2, son of the informant, PW-3, wife of the informant and PW-4, informant himself along with PW-10, the Investigating Officer.

15. PW-2, during course of his examination-in-chief had stated that on the alleged date and time of occurrence, he was at his house. After hearing sound of firing, he came out and saw his father in an injured condition. He had sustained three fire arm injuries. Pradeep Kumar Kejriwal and Manta Kejriwal and 2-4 persons were the assailants. His father had sent him to PS to inform. When he returned back from the police station then thereafter, he along with 2-4 others lifted his father and took him to Pirpaiti State Dispensary where his father regained sense and then disclosed name of assailants to him as well as his mother as Pradeep Kejriwal and Manta Kejriwal. The



motive for occurrence has been shown as Pradeep Kejriwal was insisting upon to execute a deed relating to land standing in the name of his father to the extent of half share, which his father refused. He had further stated that Manta Kejriwal is dead. Identified the accused.

16. During cross-examination at para-3, he had stated that Parmanand Kejriwal was not present at the place of occurrence nor his name was disclosed by his father amongst the assailant. At para-4, he had stated that occurrence took place 20-25 hand away from his house in the Mohalla itself. Within five minutes after hearing sound of firing, he along with his brother, Raj (not examined) friend of his father, Vijay Yadav (not examined) came at the place of occurrence and found his father lying after sustaining injury. At that very time, none other came. In para-5, he had disclosed the boundary of the place of occurrence as East- Kabit Raj, West- not known, North and South-Road. He had further stated that police arrived within 10 minutes and on the same jeep, his father was lifted to hospital. At para-6, there happens genealogical table wherefrom it is evident that appellant Pradeep Kejriwal happens to be husband of sister of the informant. Then had stated that his grand-father, Murlidhar Tekriwal was possessing land. He is now no more, while his grand mother is alive. During lifetime of his grand mother, partition took place wherein nothing was allotted to the share of Renu Devi (sister of informant) and for that, Renu Devi had advanced her claim. At para-7,



he had stated that his statement was recorded after 5-10 days of the occurrence.

17. PW-3 is the wife of the informant who had deposed that on the alleged date and time of occurrence, she was at her house. After hearing sound of firing, she came out of her house and had seen her husband in an injured condition. He had sustained two injuries, one over temporal region and the other over chest. He/ husband was shot at by Pradeep and Manta. 2-4 persons were also along with them. Then thereafter, she took her husband to the house. Her husband became unconscious. Police was informed. Police came, till then, her husband regained sense and during course thereof, her husband made statement, on the basis of which, instant case has been registered. Then thereafter, her husband was taken to the Pirpaiti Hospital and then to Bhagalpur. Identified the accused.

18. During cross-examination, she had stated that accused Parmanand Kejriwal has got no concern with the occurrence and his name was not disclosed by her husband amongst the assailants. In para-4, she had stated that she came out of her house 4-5 minutes after hearing the sound of firing. She had seen her husband lying in an injured condition. 2-4 persons were present including one lady who happens to be wife of Kuli Sah. Mother of Arjun Sharma had also arrived. In para-5, she had stated that she saw her husband in semi conscious condition. Then thereafter, she along with her son,



Monu lifted him to their house. Monu was sent to the police station. Within 15-20 minutes police came. Till then, her husband was conscious. Police lifted her husband to the hospital. She had not talked with her husband during midst of way to hospital. At para-6, she has disclosed names of persons whose house lies in the vicinity. In para-7, she had stated that her husband was lying in front of house of Jagdish Lal. Then had stated that Pradeep Kejriwal happens to be her Nandosi (husband of sister of her husband). He resides at Barahat and then denied the suggestion that he had been falsely implicated in this case.

19. PW-4 is the informant who had deposed that on the alleged date and time of occurrence while he was returning from the house of Arjun Sharma and reached near the house of Vidya Narayan Shastri, Pradeep Kejriwal caught hold of him and Mantu Kejriwal shot at his chest. Then thereafter, Pradeep shot at over his temporal region. As he fell down, Pradeep said that their job is over. While they were fleeing, he had seen four other persons who joined them. His house happens to be nearby the place of occurrence as a result of which, after hearing firing sound, his son, Monu, wife, Usha Devi, Vijay Kumar Yadav and others came. He directed his son to inform the police while he had gone to the doctor. Doctor had forwarded him to hospital wherefrom he was sent to Bhagalpur. Police came at his house and recorded his statement (exhibited). Then had stated that Renu Devi @ Munni, wife of Pradeep Kumar Kejriwal, Chhediya



Devi, his mother had conspired for commission of the instant occurrence. Then had stated that accused persons want to grab his land and for that, he has been assaulted. Identified the accused.

20. During cross-examination, he had stated that he is not knowing whether Manta who happens to be brother of Pradeep Kejriwal is dead or alive. Then had stated that Parmanand was not at the place of occurrence during course of occurrence. At para-6, he had stated that Renu Devi is his sister who is married with Pradeep Kejriwal. Chhediya Devi is his mother who is now dead. His father had 5-6 Acres of land out of which, he had executed deed in his favour with regard to 3 Acres 13 Decimals. With regard to remaining, he was directed to look after the same, hand over the crops. At para-8, he had further stated that his mother had gifted in favour of Renu Devi regarding the land falling under her share. He had not taken any steps for revoking of the same. In para-9, he had stated that he had not visited the house of Arjun Sharma at an earlier occasion. For the first time, he had gone to his house on the date of occurrence itself. At para-10, he had stated that at the time of occurrence, accused persons encircled. At that very time, he was standing having eastern face. Pradeep Kejriwal had hidden himself by the side of the road but he had not seen the exact location. For the first time, when he saw the accused persons, they were near about him. They caught hold of him. Then at para-11, he had stated that Pradeep had southern face while he



had northern face and he was shot at while continuing with the aforesaid posture. Then had stated that Arjun Sharma had taken him away. In para-12, he had stated that after sustaining injury, blood had oozen out over the road. Blood had also fallen over his clothe, but he had not given the same to the police. In para-13, he had stated that police came on information given by his son before whom he gave his statement. First of all, he himself had gone to the place of doctor, Dr. Raj Kumar Choudhary where he was bandaged, but that doctor had not prepared injury report and he is not the witness of this case. At para-14, he had stated that at the time when he sustained fire arm injury, he was wearing pant and shirt. He had sustained two fire arm injuries. There was hole in the clothe. He had not shown the same to the police. Pradeep Kejriwal had caught hold of him by both hands. Then Pradeep shot at with his right hand. Then had stated that Pradeep had shot from the distance of 3-4 hands. At the time of occurrence, at para-15, had stated that none came. He remained at his house after the occurrence for 2-3 minutes and then thereafter, had gone to hospital. Then had denied the suggestion that on account of animosity, accused has been implicated in this case.

21. PW-10, the Investigating Officer had deposed that on the alleged date at about 2.52 PM, he received information that one person has sustained fire arm injury at Mohalla-Barahat whereupon, he along with other police personnel proceeded. They reached near



the house of Murlidhar Tekriwal where they found Vijay Kumar Tibrewal @ Laddu, son of Murlidhar Tekriwal lying in a pool of blood. He recorded Fard-e-beyan (Exhibited). On the basis thereof, Ishorpur PS Case No. 82/1998 was registered. Then thereafter, he took up investigation. He had recorded statement of the witnesses. Then there happens to be inadmissible piece of evidence recorded by the learned lower court. Then had disclosed the place of occurrence to be a road at the distance of 20-25 meters from the house of the informant, Vijay Kumar Tibrewal, near the house of Kaviraj Vidyanand Shashtri. Then had shown boundary of the place of occurrence as North-Badri Sah's house, South- Kaviraj Vidyanand Shashtri, East and West-Road. Also took further statement of the informant as well as of other witnesses. Then there happens to be discloser relating to hostile witnesses. During course of investigation, procured criminal antecedent of Pradeep and Manta and the same has been recorded under para-42, 43 of the Case Diary. Conducted raid for apprehension of the accused. Then thereafter, after completing investigation, submitted charge-sheet.

22. During cross-examination he had denied at para-2 that he had recorded statement of other witnesses on his own. He had stated that blood was there. In para-4, he had stated that he had not seen the clothe of the injured. In para-5, he had stated that he had incorporated in the case diary that blood had fallen at the place of



occurrence. He had further stated that he had incorporated that blood had fallen. In para-6, he had stated that he had not prepared injury report. He had further stated that he had not procured sanctioned order relating to Arms Act. In para-7, he had stated that he had not taken statement of the witnesses. Then had denied the suggestion that the whole investigation is the result of table work and cryptic one.

23. At the earlier part of judgment, it has been held that on account of legal deficiency persisting on the record, neither the injury report nor the contents thereof, could be taken into consideration being inadmissible in the eye of law and so, the nature of injury, weapon by which, it has been caused, go out of consideration.

24. Section 307 IPC is bifurcated in three categories. The first part relates with where the activity of the accused has been recognized without having ultimate resultant. The second part happens to be where result is found, that means to say, action is depicted by way of injury (hurt) and the third part happens to be with regard to assailant being life convict. As held above, on account of legal deficiency, neither the injury report nor its contents could be read, whereupon the facts though alleged, goes out of 2nd part and so, the activity of appellant is to be seen in the aforesaid background.

25. Though, injury report has been discarded, but the status of PW-4, to be injured as has consistently been deposed. The



evidence of injured as has been held times without number, got primacy and unless and until, there happens to be un-impeccable evidence on record, it has to be accepted. In ***Chandrasekar and another vs. State of Tamil Nadu reported in 2017(4) P.L.J.R. 220 (SC)***, it has been held:-

“10. Criminal jurisprudence attaches great weightage to the evidence of a person injured in the same occurrence as it presumes that he was speaking the truth unless shown otherwise. Though the law is well settled and precedents abound, reference may usefully be made to Brahm Swaroop v. State of U.P., (2011) 6 SCC 288 observing as follows:

“28. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with an in-built guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone.”

26. *Falsus in uno, falsus in omnibus* is not the sound principle. Moreover, it has got no applicability in India. That happens to be reason behind that Court has been entrusted with pious duty to separate the truth from falsehood that means to say, separate the grain from chaff. In ***State of Himachal Pradesh vs. Trilok Chand and another reported in (2018) 2 SCC 342***, it has been held:-

“12. It is well settled that the Court can sift the chaff from the grain and find out



the truth from the testimony of the witnesses. The evidence is to be considered from the point of view of trustworthiness and once the same stands satisfied, it ought to inspire confidence in the mind of the Court to accept the stated evidence [See: [Sukhdev Yadav v. State of Bihar](#), (2001) 8 SCC 86].”

27. In *Prakash Chandra Yadav vs. State of Bihar and others reported in 2008 CRI.L.J. 438*, it has been held:-

“12. From a bare perusal of the said provision, it is evident that first part thereof does not contemplate that receipt of any injury on the part of the victim is a pre-requisite for convicting an accused thereunder. In the event injuries are received, the second part of [Section 307](#) would be attracted. The necessary ingredients for attracting the first part of [Section 307](#) of the Indian Penal Code is intention or knowledge. The legal position would be evident from the illustration (c) appended to the said provision which reads as under:

“(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of this section.”

Mr. V. Shekhar, learned senior counsel appearing on behalf of the respondent has drawn our attention to a



decision of this Court in [Parsuram Pandey & Ors. v. State of Bihar](#) [(2004) 13 SCC 189] wherein, *inter alia*, it was held :

“To constitute an offence under [Section 307](#) two ingredients of the offence must be present:

(a) an intention of or knowledge relating to commission of murder; and

(b) the doing of an act towards it.

For the purpose of [Section 307](#) what is material is the intention or the knowledge and not the consequence of the actual act done for the purpose of carrying out the intention. The section clearly contemplates an act which is done with intention of causing death but which fails to bring about the intended consequence on account of intervening circumstances. The intention or knowledge of the accused must be such as is necessary to constitute murder. In the absence of intention or knowledge which is the necessary ingredient of [Section 307](#), there can be no offence _of attempt to murder_. Intent which is a state of mind cannot be proved by precise direct evidence, as a fact it can only be detected or inferred from other factors. Some of the relevant considerations may be the nature of the weapon used, the place where injuries were inflicted, the nature of the injuries and the circumstances in which the incident took place.”



The said decision, therefore, itself is an authority for the proposition that intention of or knowledge relating to the commission of murder and the doing of an act towards it are the two ingredients of the offence under [Section 307](#) of the Indian Penal Code.

The High Court's judgment, therefore, cannot be sustained. It is set aside accordingly. The matter is remitted to the High Court for consideration of the matter afresh. We, however, make it clear that we have not gone into the merit of the matter. The High Court is requested to hear and dispose of the criminal appeal expeditiously. The appeal is allowed with the aforementioned directions."

28. In *State of Karnataka vs. Suvarnamma and another* reported in (2015) 1 SCC 323, it has been held:-

"12.6. [State of H.P. vs. Lekh Raj](#)[(2000) 1 SCC 247]:

"10. The High Court appears to have adopted a technical approach in disposing of the appeal filed by the respondents. This Court in [State of Punjab v. Jagir Singh](#) (1974) 3 SCC 277) held: (SCC pp. 285-86, para 23)

"23. A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the



conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the [pic]courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.”

The criminal trial cannot be equated with a mock scene from a stunt film. The legal trial is conducted to ascertain the guilt or innocence of the accused arraigned. In arriving at a conclusion about the truth, the courts are required to adopt a rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The hyper technicalities or figment of imagination should not be allowed to divest the court of its responsibility of sifting and weighing the evidence to arrive at the conclusion regarding the existence or otherwise of a particular circumstance keeping in view the peculiar facts of each case, the social position of the victim and the accused, the larger interests of the society particularly the law and order problem and degrading values of life inherent in the prevalent system. The realities of life have to be kept in mind while appreciating the evidence for arriving at the truth. The courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law



in favour of the accused. The traditional dogmatic hypertechnical approach has to be replaced by a rational, realistic and genuine approach for administering justice in a criminal trial. Criminal jurisprudence cannot be considered to be a utopian thought but have to be considered as part and parcel of the human civilization and the realities of life. The courts cannot ignore the erosion in values of life which are a common feature of the present system. Such erosions cannot be given a bonus in favour of those who are guilty of polluting society and mankind.”

12.7. [Gangadhar Behera vs. State of Orissa](#)[(2002)8 SCC 381]:

“15. To the same effect is the decision in [State of Punjab v. Jagir Singh](#) (1974) 3 SCC 277) and [Lehna v. State of Haryana](#) (2002) 3 SCC 76). Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution case. In essence prayer is to apply the principle of “falsus in uno, falsus in omnibus” (false in one thing, false in everything). This plea is clearly untenable. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be



open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end. The maxim “falsus in uno, falsus in omnibus” has no application in India and the witnesses cannot be branded as liars. The maxim “falsus in uno, falsus in omnibus” has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called “a mandatory rule of evidence”. ([See Nisar Ali v. State of U.P.](#) (AIR (1957) SC 366) Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate the accused who had [pic]been acquitted from those who were convicted. ([See Gurcharan Singh v. State of Punjab](#) (AIR (1956) SC 460). The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because a witness was evidently speaking an untruth in some aspect, it is to be feared that



administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See [Sohrab v. State of M.P.](#) (1972) 3 SCC 751) and [Ugar Ahir v. State of Bihar](#) (AIR 1965 SC 277). An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate the grain from the chaff, truth from falsehood. Where it is not feasible to separate the truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See [Zwinglee Ariel v. State of M.P.](#) (AIR (1954) SC 15) and [Balaka Singh v. State of Punjab](#) (1975) 4 SCC 511). As observed by this Court in [State of Rajasthan v.](#)



Kalki (1981) 2 SCC 752) normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in Krishna Mochi v. State of Bihar (2002) 6 SCC 81). Accusations have been clearly established against the accused-appellants in the case at hand. The courts below have categorically indicated the distinguishing features in evidence so far as the acquitted and the convicted accused are concerned."

29. Furthermore, Section 134 of the Evidence Act speaks about reliability of the evidence of the witness and not the number of witness. That happens to be reason behind that evidence of single witness if found reliable to be acted upon.

30. In the background of aforesaid principle now the evidences are to be seen. There happens to be conclusive evidence of PW-4 that he was shot at by the appellant including others, corroborated by the PW-2, PW-3, whose presence was quite natural



being the place of occurrence near the house. PW-10, I.O. had substantiated the same. The relevant fact coming out from his evidence is presence of injured in pool of blood when he along with other police official came on being informed at the place of occurrence. It is also evident from the evidence that neither place of occurrence nor injury over person of PW-4 has been controverted. PW-10, though had not seized blood stain soil, but not only in his examination-in-chief, rather in his cross-examination also, reiterated presence of blood at the P.O. and those things have not been challenged at the end of appellant.

31. In the aforesaid facts and circumstances of the case, the finding of the learned lower court relating to Section 307 IPC, 342 IPC as well as 27 of the Arms Act is hereby concurred. Consequent thereupon, appeal lacks merit and is, accordingly, dismissed.

32. Appellant is on bail, hence, his bail bond is, hereby, cancelled directing him to surrender before the learned lower court within a fortnight failing which, the learned lower court will be at liberty to proceed against the appellant in accordance with law.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
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