

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.550 of 2017

Arising Out of PS. Case No.-252 Year-2013 Thana- JOGAPATTI District- West Champaran

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Anil Thakur S/o Harishankar Thakur, Resident of Village- Piparpati,
P.S.- Yogapatti, District- West Champaran.

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 573 of 2017

Arising Out of PS. Case No.-252 Year-2013 Thana- JOGAPATTI District- West Champaran

=====

Ramakant Yadav son of Kashi Yadav, Resident of Village- Bariyarpur,
P.S. - Yogapatti, District- West Champaran Bettiah.

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 770 of 2017

Arising Out of PS. Case No.-252 Year-2013 Thana- JOGAPATTI District- West Champaran

=====

Dinesh Yadav son of Kashi Yadav, resident of Village- Bariyarpur, P.S.-
Yogapatti, District- West Champaran Bettiah.

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

=====

Code of Criminal Procedure, 1973; Section 374(2) – Appeal Against Conviction- Contradiction in the Statement of Eye-Witnesses - Delay in lodging FIR – improvements made in the story by the so-called eyewitness - Testimony of eyewitnesses who are also interested witnesses to be scrutinized closely – No reliance can be made - When Statements are contrary – facts twisted – improvements made – However strong a suspicion may be – cannot take place of a proof beyond reasonable doubt – Conviction fit to be quashed and set aside. Acquittal (*State of Haryana V. Mohd. Yunus AIR Online 2024 SC 28*; *Pradeep Kumar V. State of Haryana AIR Online 2024 SC 21(Para-18)*; *Ramnandan Singh, Son of Tano Singh V. State of Bihar and analogous matters 2017 (3) PLJR 377(Para-33) (Para-22 to 28)*).

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Arising Out of PS. Case No.-252 Year-2013 Thana- JOGAPATTI District- West Champaran

Ramakant Yadav son of Kashi Yadav, Resident of Village- Bariyarpur, P.S. -
Yogapatti, District- West Champaran Bettiah.

... .. Appellant/s

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... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 770 of 2017

Arising Out of PS. Case No.-252 Year-2013 Thana- JOGAPATTI District- West Champaran

Dinesh Yadav son of Kashi Yadav, resident of Village- Bariyarpur, P.S.-
Yogapatti, District- West Champaran Bettiah.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 550 of 2017)
For the Appellant/s : Mr. Sanjeev Kumar, Advocate
Ms. Bharti Rai, Advocate
Mr. Raushan Raj, Advocate
For the State : Mr. Dilip Kumar Sinha, APP
For the Informant : Mr. Shailesh Kumar, Advocate
(In CRIMINAL APPEAL (DB) No. 573 of 2017)
For the Appellant/s : Mr. Rama Kant Sharma, Sr. Advocate
Mr. Lakshmi Kant Sharma, Advocate
For the State : Ms. Shashi Bala Verma, APP
(In CRIMINAL APPEAL (DB) No. 770 of 2017)



For the Appellant/s : Mr. Rama Kant Sharma, Sr. Advocate
For the State : Mr. Dilip Kumar Sinha, APP
For the Informant : Mr. Shailesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 09-02-2024

All these appeals are filed under Section- 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as ‘Cr.P.C.’) challenging the common judgment of conviction dated 29.04.2017 and order of sentence dated 01.05.2017 passed by learned Addl. District and Sessions Judge-II, Bettiah, West Champaran in S.Tr. No. 81 of 2014 (arising out of Jogapatti P.S. Case No. 252 of 2013), by which appellants Anil Thakur, Ramakant Yadav and Dinesh Yadav have been convicted for the offence punishable under Sections- 302/34 of I.P.C. and sentenced to undergo life imprisonment and to pay a fine of Rs.10,000 (ten thousand) each and, in default of payment, to further undergo rigorous imprisonment for six months. Appellant Dinesh Yadav has also been convicted for the offence punishable under Section-27(1) of Arms Act and has been sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 5000 (five thousand) and, in default of payment of fine, to further undergo rigorous



imprisonment for three months. All the sentences have been ordered to run concurrently.

2. Heard Mr. Rama Kant Sharma, learned Senior Advocate, assisted by Mr. Lakshmi Kant Sharma, Mr. Sanjeev Kumar, Ms. Bharti Rai and Mr. Raushan Raj for the appellants, Mr. Shailesh Kumar, learned counsel for the informant and Mr. Dilip Kumar Sinha and Km. Shashi Bala Verma, learned A.P.P's. for the respondent-State

3. Prosecution story in brief is as under:

“On 19.10.2013 at 07.00 A.M. the Officer-in-charge, Jogapatti, namely Baidyanath Chaudhary called the informant's father, namely, Md, Gazi (the deceased) who is elected member of *Zila Parishad* to the police station for a *panchayati*. Thereafter, co-accused, Anil Thakur came to the house of the informant and he took away the deceased to the police station over his Hero Honda Splendor Motorcycle. At the police station, the officer-in-charge had called the co-accused, Dinesh Yadav and Ramakant Yadav from before. When the deceased went to the police station, the officer-in-charge told him after some time that no *panchayati* would be held and he told the deceased to go away. Thereafter, the deceased proceeded for his home with Anil Thakur. The



aforesaid persons also followed the deceased on their motorcycle. After sometime when the deceased did not arrive at his house, the informant along with Islam Mian and Manjoor Alam went outside on his motorcycle in search of the deceased. While the informant was at some distance from Dubwalia village, he saw that Ramakant Yadav and Anil Thakur were catching the hands of the deceased and Dinesh Yadav fired indiscriminately over the deceased. The deceased fell down after sustaining injuries and the aforesaid accused persons fled away after killing the deceased. Thereafter, the officer-in-charge came with his jeep and he took the deceased to police station instead of taking the deceased to hospital. Time and again, the informant was requesting the officer-in-charge to take the deceased to the hospital quickly, but with an intention to kill the deceased, the officer-in-charge caused undue delay at the police station without any reason. After sometime while the deceased was being taken to hospital by the officer-in-charge, the deceased told the informant that the officer-in-charge had called the aforesaid accused persons at the police station from before and the deceased believed that the officer-in-charge, Jayant Prasad, Bablu Singh @ Santosh Kumar Rao and Shambhu Tiwari have got their hands in the occurrence.”



4. After filing of the F.I.R., the investigating agency carried out the investigation and during the course of investigation, the Investigating Officer recorded the statement of the witnesses and collected the relevant documents and thereafter filed the charge-sheet against the accused. As the case was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions.

5. Learned advocates appearing for the appellants mainly submitted that P.W. 4, informant, submitted written application/complaint to the concerned police authority at about 3:15 p.m. on 19.10.2013 in which the informant has levelled allegations against one Baijnath Chaudhary, who was police officer working in the Jogapatti police station, and, therefore, initially said police officer was shown as accused No. 4 in the F.I.R. It is revealed that the allegations levelled against Baijnath Chaudhary were not correct and, therefore, charge-sheet was not filed against him. On the contrary, the prosecution examined Baijnath Chaudhary as P.W. 13. It is further submitted that the informant, P.W. 4, has narrated different story while giving deposition before the Court. It is contended that, as per the story put forward by the informant, he along with two other witnesses, namely P.W.1 Islam Mian



and P.W. 2 Manzoor Alam went on the motorcycle in search of the father of the informant. Independent witness, P.W. 7 Fida Mian met them and he informed them that father of the informant had gone on the motorcycle of Anil Thakur towards Bettiah and, therefore, when they went in the said direction, they have seen the occurrence in question. It is the case of the informant that accused Anil Thakur and Ramakant Yadav had caught hold of the hands of the deceased and Dinesh Yadav made indiscriminate firing in which the father of the informant sustained bullet injuries. Thereafter, the informant and two other eye-witnesses took the injured in a tempo to P.H.C., Jogapatti.

6. At that time, Baijnath Chaudhary, police officer, came in the jeep and in the said jeep the injured was taken to M.J.K. Hospital, Battiah and thereafter the injured succumbed to the injuries. Learned counsel, therefore, urged that there are major contradictions and improvements in the deposition of the informant. Similarly, the so-called other two eye-witnesses, P.W.1 and P.W. 2, are near relatives of the deceased and the prosecution has placed reliance upon the deposition of the said witnesses. However, the story put forward by the so-called eye-witnesses is not supported by the deposition given by the other



prosecution-witnesses. Learned counsels for the appellants referred the deposition given by P.W. 7 Fida Mian who has not stated in his deposition that the aforesaid three witnesses met him and he informed them about the location of the deceased. It is further submitted that even Rambali Pandit, P.W. 8, and Gul Mohammad Ansari, P.W. 6, have also not supported the case of the prosecution.

7. Learned advocates for the appellants would thereafter submit that Dr. Imtiyaz Ahmad, P.W. 9, has given treatment to the injured. However, from the deposition of the said witness also it is revealed that the informant and two other so-called eye-witnesses were not present in P.H.C., Jogapatti. It is also contended that P.W. 12 Awadhesh Kumar, the Investigating Officer, and P.W. 13, Baijnath Chaudhary, have also specifically stated that the informant came to the hospital after the death of the deceased. Thus, the presence of the so-called eye-witnesses, i.e. P.W. 1, 2 and 4, is not established from the deposition of the other prosecution witnesses. It is also submitted that Baijnath Chaudhary, P.W. 13, has specifically stated in his examination-in-chief that he got information at 9:15 a.m. on his mobile phone from one Moter Mian about the occurrence in question. However, the said



Moter Mian has not been examined by the prosecution. It is further submitted that on the basis of the information received from Moter Mian, it was the duty of the police authority to register the said information in the station diary and to treat the same as F.I.R. However, the F.I.R. was not registered and, in fact, on the basis of the written complaint given by the informant, the F.I.R. came to be registered at 3:15 p.m. Thus, there is gross delay in lodging the F.I.R. It is also pointed out that inquest was prepared at 11:05 a.m. It is further submitted that from the evidence led by the prosecution, it is also revealed that the accused Anil Thakur was present with the injured throughout and, in fact, he was weeping. Thus, looking to the conduct of the said accused also, it cannot be said that he has, in any way, participated in the occurrence in question.

8. Learned counsels would thereafter submit that from the *post mortem* report of the dead body of the deceased, it would reveal that the deceased sustained two bullet injuries over left wrist joint and left upper arm and one injury on the right hand and, therefore also, the allegation levelled by the informant that two accused caught hold of the hands of the deceased and accused Dinesh Yadav made indiscriminate firing on the deceased cannot be believed. Thus, it is contended that



the so-called eye-witnesses are not trustworthy and credible and, therefore, their deposition is required to be discarded. It is submitted that despite the fact that the prosecution has failed to prove the case against the accused beyond reasonable doubt, the Trial Court has passed the impugned order of conviction and, therefore, the said order be quashed and set aside.

9. On the other hand, learned advocate appearing for the informant as well as learned A.P.P. have vehemently opposed the present appeals. It has been contended on behalf of the respondents that there are three eye-witnesses to the occurrence in question and their presence at the place of occurrence was natural. In fact, the three eye-witnesses have seen the occurrence in question and injured was initially brought to P.H.C., Jogapatti and thereafter he was taken to M.J.K. Hospital, Bettiah. It is submitted that, as the police has not registered the F.I.R., the written complaint was given and, therefore, there was a delay in lodging the F.I.R. However, it cannot be said that the appellants herein have been falsely implicated in the occurrence in question, as alleged. Learned counsels for the respondents have submitted that the prosecution has proved the case against the accused beyond reasonable doubt and the medical evidence also supports the



version of the eye-witnesses and, therefore, no error is committed by the Trial Court while passing the impugned order. Learned counsels, therefore, urged that these appeals be dismissed.

10. We have considered the submissions canvassed by the learned counsels for the parties.

11. We have also perused the materials placed on record and the evidence led by the prosecution.

12. Having heard learned counsels for the parties, it would emerge from a close scrutiny of the evidence, without going into details, led by the prosecution before the trial Court that P.W.1, P.W. 2 and P.W.4 have claimed themselves as eye-witnesses to the occurrence in question. PW. 4, informant, is the son of the deceased whereas P.W.1 and P.W.2 are cousins of deceased Md. Gazi Mian and also co-villagers. Thus, the so-called eye-witnesses are the interested witnesses and, therefore, the depositions given by the said witnesses are required to be scrutinized closely. It is the case of the informant that he along with P.W.1 and P.W. 2 had gone on motorcycle in search of his father and on the way P.W. 7 Fida Mian met them and, when inquired, he told that deceased just seems to be sitting on the motorcycle of Anil Thakur and going towards Bettiah. The



informant along with P.W. 1 and P.W. 2 went towards the said direction and it is the case of the prosecution that all the three eye-witnesses have seen the occurrence. It is the specific case of the prosecution that accused Anil Thakur and Ramakant Yadav had caught hold of the hands of the deceased whereas Dinesh Yadav opened indiscriminate firing in which deceased sustained injuries. Thereafter, the deceased was taken in a tempo to P.H.C., Jogapatti. At that time, P.W. 13 Baijnath Chaudhary, who is a police officer, came in the government jeep and from P.H.C., Jogapatti, the injured was taken to M.J.K. Hospital, Bettiah. However, at this stage, if the deposition given by P.W. 7 Fida Mian is carefully seen, the said witness, in his examination, in para-9 said that on the date of occurrence or afterwards, he never met to the informant though the claim of P.W.1, P.W.2 and P.W.4 is that they met the said witness at Baidyanath Hotel and got information that deceased seems to be sitting on the motorcycle of Anil Thakur and going towards Bettiah. Similarly, P.W.8 Rambali Pandit said in his examination-in-chief in para Nos. 5 and 6 that he had taken the deceased to P.H.C., Jogapatti with the help of Rajesh Yadav, P.W. 10, on a tempo which was going towards Bettiah. However, the said witness did not say that P.W.1, P.W.2 and



P.W.4 were present at the said place. At this stage, it is relevant to note that P.W.8 is also corroborating the evidence of P.W. 9 Dr. Imtiyaz Ahmad. P.W. 9, in his deposition in para-2 confirms that it is Rambali Pandit, P.W.8, who brought the deceased to the hospital and sought for the help in presence of Anil Thakur. P.W.8 has further stated that from P.H.C., Jogapatti he took the deceased to M.J.K. Hospital, Bettiah along with S.H.O., Jogapatti, and two other police personnel in the police jeep. The said witness does not state about the presence of the informant or the two other so-called eye-witnesses.

13. It is also revealed from the deposition of the prosecution-witnesses that Md. Abulaish, P.W.4, his mother, P.W.3, and P.W.1 came to the M.J.K. Hospital, Bettiah only after half an hour from the death of Md. Gazi Mian. Similarly, P.W. 12 Awadhesh Kumar, who happens to be the Investigating officer of the case, also admits in his deposition that it has come in the deposition of the Dy. S.P. that, for the first time, the informant Md. Abulaish appeared in connection with this case only at M.J.K. Hospital, Bettiah after the death of his father. He has also stated that Rambali Pandit and Rajesh Yadav are the persons who reached at the scene first. He has further admitted that during the investigation, he did not find the claim of the



informant to be true that he had witnessed the crime along with P.W.1 and P.W.2.

14. P.W. 13 Baijnath Chaudhary, who happens to be the then S.H.O., Jogapatti, has stated that when the deceased was taken to M.J.K. Hospital, Bettiah from Jogapatti, Rambali Pandit and Dr. Imtiyaz Ahmad were present in his jeep. He has also stated that at the time when the deceased was brought to the Jogapatti P.H.C. neither the informant nor P.W.1 nor P.W.2 were present there. He has also stated that when the deceased was taken to M.J.K. Hospital, Bettiah, at that time also, P.W.4, P.W.1 and P.W.2 were not present. After the death of Md. Gazi Mian, his son, i.e. the informant, and P.W.3, mother of the informant, reached to the hospital. He has further stated that when he opposed the informant from naming the innocent person as the accused, at that time informant shouted in the hospital and thereafter written complaint was given wherein even said Baijnath Chaudhary was shown as accused No.4.

15. Thus, from the deposition of the aforesaid witnesses of the prosecution, it can be said that P.W.1, P.W.2 and P.W.4 were not present at the place of occurrence, as claimed by them, and the said witnesses are not trustworthy and their deposition is not credible.



16. At this stage, it is also relevant to note that there is a delay in lodging the F.I.R. It is the case of the informant in the written complaint that the deceased proceeded from his house at 7:00 a.m. on 19.10.2013. P.W.2, who claims to be an eye-witness, has stated in his deposition that the occurrence took place at 9:00 a.m. P.W. 9 Dr. Imtiyaz Ahmad, who treated the deceased at Jogapatti P.H.C. has stated that the deceased was brought to P.H.C. at 8:45 a.m. In the charge memo the occurrence has been shown to have taken place at 8:50 a.m., whereas the inquest was prepared at 11:05 a.m. at M.J.K. Hospital, Bettiah. Thereafter, the *post mortem* report suggests that the *post mortem* examination was commenced at about 12:45 p.m. Now it is the case of the informant that he was present at the place of occurrence and when the deceased was being taken to P.H.C., Jogapatti, the Officer-in-Charge came. It is the further case of the informant that from P.H.C. Jogappatti, the Officer-in-Charge, Jogapatti P.S., took the deceased in his jeep to M.J.K. Hospital, Bettiah and the informant was all along present. However, it is surprising that he had not given *fardbeyan* either at P.H.C., Jogapatti or at M.J.K. Hospital, Bettiah.

17. It is also revealed that P.W.4 did not give his



statement in Sadar Hospital, Bettiah and he became hostile with the police and thereafter at 3:15 p.m. the written complaint was filed before the said police officer.

18. It would further reveal from the record that P.W.13, Baijnath Chaudhary, who is the Officer-in-Charge of the concerned police station, has specifically stated in his examination-in-chief that one Moter Mian gave telephonic information at about 9:15 a.m. on his mobile phone about the alleged occurrence. In the said information, the name of the assailants and the manner in which the occurrence took place was disclosed, despite which the said officer did not make entry in the station diary nor he had registered the same as First Information Report. It is also pertinent to note that the said person, i.e. Moter Mian, was not examined by the prosecution.

19. We have also gone through the deposition given by P.W.11, Dr. Ram Bishwas Yadav, who has conducted the *post mortem* of the dead body of the deceased. He has found the following *ante mortem* injuries.

“There were following *antemortem* injuries, external injuries.

(i) One Circular wound 1 C.M wide on extension surface of left wrist joint. The wound was given was inverted. Skin margin blackened (entry wound).

(ii) One circular wound 1.25 Cm wide on mid portion of



flexion of left forearm (exit wound) wound no-one and two are intercommunicated.

(iii) One circular wound 1 C.M wide on medial surface of left upper arm near axilla, margins was inverted (entry wound).

(iv) One circular wound 1.25 cm wide on lateral side of left upper arm, margins was everted (exit wound) wound No. 3 and 4 are inter communicating.

(v) One circular wound 1 C.M wide below umbilicus margin was inverted (entry wound).

(vi) One circular 1.25 cm wide on left side of umbilicus margin was everted (exit wound).

(vii) One circular wound combined with right marginal region, margins were everted (entry wound)

(viii) One circular wound 1.25 wide in the right side of abdomen the margins was everted (Exit wound) wound No. 7 and 8 are communicated.

(ix) One circular wound cum wide in the right wrist margin was inverted (entry wound)

(x) One circular wound one CM wide on lateral Surface of left thigh margin was inverted (entry wound)

X-ray plate no. 650 dated 19.10.13 shows presence of two radio opaque shadows internal aim alone mode. On dissection of wound no 9, one metallic substance resembling a bullet was found. On dissection of wound no. 10 one metallic substance was recovered, the marginal vessel. was found punctured and lacerated. The deceased died due to hemorrhage and shock as a result of fire arm injuries. The time since death - 4 - 6 hours.”

20. From his deposition, it is revealed that the



deceased had received as many as six fire-arm injuries on his person. Two fire-arm injuries were found over left wrist joint and left upper arm whereas one injury was found over right wrist. Thus, the prosecution story that two accused persons were catching hold of the hands of the deceased when the third accused fired at the deceased indiscriminately cannot be believed and it is not in consonance with the medical evidence.

21. It is also revealed from the deposition given by the prosecution-witnesses that appellant Anil Thakur was weeping at the place occurrence. A tempo was caused to be stopped and P.W. 8 Rambali Pandit along with appellant Anil Thakur and P.W. 10 Rajesh Yadav put the deceased into the tempo and thereafter deceased was taken to Jogapatti Hospital. Similarly, P.W.9 Dr. Imtiyaz Ahmad, who treated the deceased at Jogapatti Hospital, has also stated that appellant Anil Thakur was present at P.H.C. Jogapatti just behind the tempo and Anil Thakur also went to M.J.K. Hospital, Bettiah. P.W.10 Rajesh Yadav has also given the said version. Even P.W.13 has also stated that he saw Anil Thakur at hospital where the deceased had been brought in injured condition. Thus, it transpires from the record that appellant Anil Thakur did not flee away from the place of occurrence.



22. Learned counsels for the appellants have mainly relied on two judgments of Hon'ble Supreme Court in the cases of **State of Haryana Vs. Mohd. Yunus**, reported in **AIRONLINE 2024 SC 28**, and **Pradeep Kumar Vs. State of Haryana**, reported in **AIRONLINE 2024 SC 21** and one judgement of this Court in the case of **Ramnandan Singh, Son of Tano Singh Vs. State of Bihar and analogous matters**, reported in **2017(3) PLJR 377**.

23. In the case of Md. Yunus (supra), the Hon'ble Supreme Court has observed in para-17 as under:

“17. It is to be noticed that as per the first version of the incident narrated by the informant-Deenu in the FIR lodged by him, Ghasita (A3) gave a Pharsa blow on the head of the deceased and second blow was given by Akhtar Hussain (A4) by Pharsa over his head and third blow was given by Mohd. Jamil (A2) with Kulhari on his head and when the deceased fell down, Mohd. Yunus (A1) gave a lathi blow and Ghasita (A3) gave another blow over the head of the deceased When Akhtar Hussain (A4) was sent for trial, Deenu was examined as PW-7 who maintained his statement that Mohd. Jamil (A2), Ghasita (A3) and Akhtar Hussain (A4) assaulted the deceased with Pharsa and Kulhari. Comparing the statement of the Deenu (PW-7) with the statement of Ahmad (PW-8), the Trial Court found major contradictions and disbelieved the statement of Deenu (PW-7) while acquitting Akhtar Hussain(A4) of the charges under Section 302 read with Section 34 IPC. It was also held in the said judgment of the Trial Court that PW-7 and PW-8 are interested witnesses



and cannot be relied upon in the circumstances of the case. Further it was noticed that PW-7 is changing his stand inasmuch as in his earlier statement dated 08.07.1999 he denied that Ghasita (A3) and Akhtar Hussain (A4) were armed with Pharsa which he stated in the trial against Akhtar Hussain (A4). The Trial Court was of the opinion that both the important witnesses namely, Deenu (PW-7) and Ahmad (PW-8) made improvements in their statements. Therefore, when the statements are contrary, facts are twisted and improvements are made, no reliance can be made upon such statement.”

24. From the said observation, it can be said that when the statements are contrary, facts are twisted and improvements are made, no reliance can be made upon such statements.

25. In the case of Pradeep Kumar (supra), the Hon'ble Supreme Court has observed in paragraph-18 as under:

“18. It is a settled principle of law that however strong a suspicion may be, it cannot take place of a proof beyond reasonable doubt. In the light of these guiding principles, we will have to consider the present case.”

26. From the aforesaid observation, it can be said that however strong a suspicion may be, it cannot take place of a proof beyond reasonable doubt.

27. In the case of Ramnandan Singh (supra), this Court has observed in paragraph-33 as under:



“33. It is trite that the witnesses, ordinarily, fall into three distinct categories, namely, (i) wholly reliable, (ii) wholly unreliable and (iii) neither wholly reliable nor wholly unreliable. If the witness is wholly reliable, his evidence can be implicitly relied upon and such a witness's testimony can be made basis for conviction of an accused. Similarly, when a witness is found to be wholly 15 unreliable, no reliance can at all be placed on his evidence and his evidence has to be rejected outright. When, however, a witness is found to be neither wholly reliable, nor wholly unreliable, his evidence cannot be accepted as true unless his evidence is found to have been corroborated by some credible independent evidence, direct or circumstantial.”

28. Keeping in view the aforesaid decisions rendered by the Hon'ble Supreme Court as well as by this Court, if the facts stated hereinabove are carefully examined, we are of the view that there are contradictions and improvements in the story of the so-called eye-witnesses. Further, from the deposition of the prosecution-witnesses, i.e. P.W.8, 9, 10, 12 and 13 itself, it can be said that P.W.1, P.W.2 and P.W.4 were not present at P.H.C., Jogapatti or at M.J.K. Hospital, Bettiah with the injured. Thus, deposition of P.W. 1, P.W. 2 and P.W.4, who claim to be the eye-witnesses, are not reliable, trustworthy and credible and their deposition deserves to be discarded. Further, there is a delay in lodging the F.I.R.



coupled with the conduct of the informant that though he claims that he was present at both the hospitals, he did not give his *fardbeyan* before the police and after a few hours of the occurrence, he gave a written complaint to the police wherein initially even P.W.13 police officer Baijnath Chaudhary came to be implicated. Even the medical evidence, as discussed hereinabove, does not support the theory of the prosecution and the version of the eye-witnesses.

29. Thus, we are of the view that the prosecution has failed to prove the case against the appellants beyond reasonable doubt, despite which the Trial Court has recorded the order of conviction. Hence, the impugned judgment and order requires to be quashed and set aside.

30. Accordingly, the impugned common judgment of conviction dated 29.04.2017 and order of sentence dated 01.05.2017 passed by learned 2nd Additional District & Sessions Judge, Bettiah, West Champaran, in connection with Sessions Trial No. 81 of 2014, (arising out of Jogapatti P.S. Case No. 252 of 2013) are quashed and set aside. The appellants, namely, Anil Thakur, Ramakant Yadav and Dinesh Yadav are acquitted of the charges levelled against them by the learned Trial Court.



30.1. Since all the appellants named above are in jail, they are directed to be released from custody forthwith, if their presence is not required in any other case.

31. All the appeals stand allowed.

(Vipul M. Pancholi, J)

(Rudra Prakash Mishra, J)

K.C.Jha/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	19.02.2024
Transmission Date	19.02.2024

