

HIGH COURT OF MADHYA PRADESH : AT JABALPUR

Criminal Appeal No : 752 of 1996

Surendra Kumar

- V/s -

State of Madhya Pradesh

Present : **Hon'ble Shri Justice Rajendra Menon.**

Shri Surendra Singh, Senior Advocate, with Shri
A.K. Dubey for the appellant.

Smt. D.K. Bohrey, PL, for the respondent/State.

Whether approved for reporting:

Yes / No.

JUDGMENT

26/02/2015

In this appeal under section 374(2) of the Code of Criminal Procedure, the appellant calls in question his conviction for offence under section 304(II) of the Indian Penal Code and sentence of rigorous imprisonment for 7 years in Sessions Trial No. 86/1995 recorded by the 1st Additional District Judge, Khurai, District Sagar vide his judgment dated 18.4.1996.

2- Appellant alongwith seven other co-accused persons were prosecuted for offence under sections 147, 148, 302/149 and 307/149 of the Indian Penal Code. All the eight accused, including the appellant, have been acquitted of all the offences including the offence under section 302, but the appellant alone is convicted for an offence under section 304(II) of the IPC for having caused a solitary knife injury on the person of deceased – one Dhirendra Parihar, therefore, this appeal.

3- It is the case of the prosecution that on 6.11.1994, at about 10.00 PM – Bhupendra Singh (injured person) met Dhirendra Parihar

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(since deceased) and was proceeding to his house to pay regards to his elder brother. While they were so going and when they reached Jhanda Chowk, Khurai and were near to the shop of one Mulayam Chand – one of the acquitted co-accused, the shop of Mulayam Chand was partly closed by shutter. It is said that the appellant and other seven co-accused persons, who were already waiting there, namely Dharmendra Khaddar, Surendra Khaddar, Sandeep Khaddar, Manoj Singhai, Sandeep, Mahesh @ Rajjan Rokhadia and Alok were armed with weapons like lathi and knife. It is said that on seeing Bhupendra Singh – PW/3 with Dhirendra Parihar, all of them came out and assaulted them. It is said that co-accused persons Alok and Mulayam Chand incited all the persons to commit the assault. Mahesh, Sandeep and Manoj are said to have assaulted both Bhupendra Singh and Dhirendra Parihar with knives; Mulayam Chand and Manish assaulted both of them with lathi and it is stated that present appellant caused a solitary knife injury on the person of Dhirendra Parihar. It is stated that they were rushed to the Hospital where Dhirendra Parihar succumbed to the injury. Bhupendra Singh was treated and thereafter he was discharged. First Information Report – Ex.P/6 was lodged by Bhupendra Singh while he was in the Hospital. His case diary statement was also recorded by the police authorities in the Hospital vide Ex.D/1. That apart, it is said that a dying declaration of this person was also recorded as Ex.D/2 by the Naib Tehsildar. In support of the case, various witnesses were examined. In all there are five eye-witnesses to the incident. They are PW/3 Bhupendra Singh – injured eye-witness; PW/4 Ikram; PW/5 Karan Singh; PW/6 Nitiraj Singh; and, PW/10 Rajendra Singh. Knife with which the appellant is said to have caused the injury on the person of deceased Dhirendra Parihar was also seized and it was sent for forensic examination.

4- Based on the evidence and material that came on record, the learned Court found that statement of PW/4 Ikram, PW/5 Karan Singh; PW/6 Nitiraj Singh and PW/10 Rajendra Singh – the four eye-witnesses, is not credit worthy, they are trying to falsely implicate the accused persons, particularly the seven acquitted persons and did not put much

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credence on their statement. Infact the statement of all these four witnesses have been rejected by the learned court below for various reasons as are indicated in the judgment. However, the statement of PW/3 Bhupendra Singh was accepted by the court in part. For the purpose of considering the offence committed by the seven other co-accused persons, the trial court has found that the statement of Bhupendra for the purpose of these accused persons cannot be accepted. However, for the purpose of convicting the present appellant for offence under section 304(II) IPC, the court below believed the statement of Bhupendra Singh – PW/3 and based on his solitary statement the appellant herein has been convicted for the offence and sentenced to undergo rigorous imprisonment for 7 years.

5- Shri Surendra Singh, learned Senior Advocate for the appellant, took me through the judgment and reasoning given by the trial court with regard to analysis of the statement of the four eye-witnesses namely - PW/3 Bhupendra Singh – injured eye-witness; PW/4 Ikram; PW/5 Karan Singh; PW/6 Nitiraj Singh; and, PW/10 Rajendra Singh. Learned Senior Advocate referred to the findings recorded by the trial court in paragraph 26, 41, 49 and 59, with regard to the veracity and genuineness of the statement made by these witnesses and says that the trial court has rejected the statement of all these witnesses for the reasons indicated therein. The trial court having done so, thereafter placed heavy reliance on the statement of PW/3 Bhupendra Singh only for the purpose of holding the appellant to have committed the offence. As far as the statement of PW/3 Bhupendra Singh with regard to the commission of offence by the other co-accused persons are concerned, learned Senior Advocate invites my attention to the analysis of the statement of these witnesses made by the trial court from paragraph 9 onwards, to say that the statement of Bhupendra Singh with regard to the other seven accused is rejected by the trial court on the ground that it is not reliable and he seems to have been falsely implicated the seven co-accused persons. It was emphasized by learned Senior Advocate that if the statement of PW/3 Bhupendra is disbelieved by the trial court for the

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purpose of acquitting co-accused persons, then there is no reason as to why statement of such witness should be relied upon for convicting the present appellant. Learned Senior Advocate further submits that if statement of all a witness is not at all credit worthy with respect to some accused, then for accused it cannot be credit worthy; it cannot be treated credit worthy for one accused and not credit worthy for other accused. In the matter of statement of PW/3 Bhupendra Singh, learned Senior Advocate took me through the statement given by him in the form of FIR – Ex.P/6 and points out that it is nowhere stated in the FIR that it is appellant Surendra Kumar who had caused the knife injury on the person of Dhirendra Parihar. Thereafter, learned Senior Advocate took me through the statement of this witness again recorded as the case diary statement – Ex.D/1 to say that the solitary knife injury caused on the person of Dhirendra Parihar is caused by the appellant. That apart, learned Senior Advocate invites my attention to the so-called dying-declaration of PW/3 Bhupendra Singh recorded as Ex.D/2 and points out that in this he speaks about a third person as having caused injury on the person of Dhirendra Parihar.

6- Accordingly, Shri Surendra Singh – learned Senior Advocate, argues that there are serious discrepancy in the statement of PW/3 Bhupendra Singh recorded in the Court and the version given by him in the FIR – Ex.P/6, the case diary statement – Ex.D/1; and, the so-called dying declaration – Ex.D/2. It is stated that taking note of these discrepancy in the statement and the manner in which the learned court below has rejected the statement of PW/3 for the purpose of acquitting the other accused persons, similar benefit should have been granted to the appellant and the statement of Bhupendra Singh – PW/3 should be discarded for all purposes and if the said statement goes, then there is no evidence against the appellant to show that he had caused the injury on the person of Dhirendra Parihar.

7- Shri Surendra Singh, learned Senior Advocate, thereafter took me through the material available on record to say that even though a knife has been recovered from the person of the present appellant; and

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the knife has been sent for forensic examination, but neither the report of the forensic laboratory has been exhibited or proved in evidence nor is there anything available on record to show that the knife was stained with human blood. Learned Senior Advocate refers to the seizure memo – Ex.P/27 to say that in this document there is nothing to say that the knife is stained with blood marks, of human. Learned Senior Advocate also refers to the finding recorded by the trial court in this regard in paragraph 104, to argue that the trial court found that the knife was seized and thereafter referred to the Forensic Science Laboratory, Sagar, but in the report submitted in evidence, nothing has been proved by the prosecution to say that the knife was stained with human blood. Taking note of all these circumstances, learned Senior Advocate argues that conviction of the appellant is not sustainable.

8- Learned Senior Advocate further invites my attention to the principle of law laid down by the Supreme Court in the case of **Vadivelu Thevar Vs. The State of Madras, AIR 1957 SC 614**; followed in the case of **Vithal Pundalik Zende Vs. State of Maharashtra, AIR 2009 SC 1110**, to say that witnesses in a criminal case are of three category. A witness who is wholly reliable; a witness who is wholly unreliable; and, a witness neither wholly reliable nor wholly unreliable. Learned Senior Advocate points out that for a witness of the third category, it is held that statement of such a witness cannot be accepted until and unless there is corroborative evidence to support the statement of such a witness, which falls in the third category. According to Shri Surendra Singh – learned Senior Advocate, if the statement of PW/3 Bhupendra Singh is analysed in the backdrop of this requirement of law then for accepting the statement of this witness, falling in the third category, in the absence of there being any corroborative evidence to support the case as put forth by him, it is argued that the statement of Bhupendra Singh cannot be accepted.

9- Further reliance is placed with regard to the same principle as laid down by the Supreme Court in the case of **Balaka Singh and others Vs. State of Punjab, AIR 1975 SC 1962**, and in the case of

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Lakshmi Singh Vs. State of Bihar, AIR 1976 SC 2263. Accordingly, in the backdrop of the aforesaid submissions, learned Senior Advocate submits that the case of the prosecution has not been proved with regard to appellant Surendra Kumar, therefore, it is a fit case where the appeal should be allowed and he should be acquitted of the offence.

10- Smt. D.K. Bohrey, learned Panel Lawyer appearing for the State, refuted the aforesaid and placed reliance on the statement of PW/3 Bhupendra Singh with regard to the incident as narrated by him in the Court and also invited my attention to the statement of PW/6 Nitiraj Singh and PW/10 Rajendra Singh to say that there is corroborative evidence in the form of statement given by these two witnesses to say that the knife injury found on the person of Dhirendra Parihar was caused by the present appellant Surendra Kumar. Accordingly, Smt. Bohrey argues that from the material available on record, the allegation against the present appellant Surendra Kumar is proved. She further invites my attention to the statement of PW/1 Dr. B.B.S. Chouhan, who had submitted the post-mortem report – Ex.P/1 and the injuries sustained by deceased Dhirendra Parihar, and argued that death was caused by the solitary injury sustained in his stomach and as this injury is found to be caused by appellant Surendra Kumar, it is submitted by learned Panel Lawyer that the learned trial court has not committed any error.

11- Learned Panel Lawyer further argued that the trial court having analysed the statement of the witnesses meticulously and having convicted the appellant only for an offence under section 304(II) IPC, no infirmity is there in the judgment of the trial court nor is it erroneous warranting reconsideration now in this appeal.

12- I have heard learned counsel for the parties at length and perused the records.

13- It is a fact that in all eight persons, including the present appellant, were put to trial in S.T. No.86/95 in the Court of Additional Sessions Judge, Khurai District Sagar for offence under sections 147, 148, 302/149 and 307/149 of the Indian Penal Code. All the seven co-accused persons namely Dharmendra Khaddar, Surendra Khaddar,

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Sandeep Khaddar, Manoj Singhai, Sandeep, Mahesh @ Rajjan Rokhadia and Alok have been acquitted of all the charges levelled against them. Even though the present appellant Surendra Kumar has been acquitted of all the charges originally levelled under sections 147, 148, 302/149 and 307/149 IPC, but finding him to have caused an injury by use of a knife on the stomach of deceased Dhirendra Parihar, he has been convicted under section 304(II) IPC.

14- That being so, the only consideration to be made now by this Court in this appeal is with regard to the conviction of the present appellant Surendra Kumar for the offence as indicated hereinabove, as the State has not filed any appeal against the acquittal of the other co-accused persons nor is any appeal filed by the State with regard to acquittal of this appellant for offence under sections 302/149 or 307/149 of the IPC.

15- The story of the prosecution as has been narrated hereinabove would show that the incident took place on 6th November, 1994 at about 10 P. M. in the night near Jhanda Chowk Khurai, Distt. Sagar.

16- PW-3 Bhupendra Singh and Dhirendra Parihar are said to have been attacked by 8 accused persons with knife and lathi and both are said to have sustained various injuries as are testified by PW-1 Dr. D. B. S. Chouhan and PW-2 Dr. Anand Singhai.

17- As far as Dhirendra Parihar is concerned, he succumbed to the injury and died and in the post-mortem report Annexure P-6, death is said to have been caused because of a knife injury caused on his stomach. All the other co-accused persons have been acquitted of all the charges and it is only the present appellant Surendra Kumar who is convicted for an offence U/s 304 (Part II) on the basis of the statement of the injured eye-witness Bhupendra Singh PW-3.

18- There are 5 eye-witnesses to the incident, they are PW-3 Bhupendra, the injured witness and 4 independent witnesses namely PW-4 Ikram Khan, PW-5 Karan Singh, PW-6 Nitiraj Singh and PW-10 Rajendra

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Singh. All these witnesses speak about the accused persons having attacked both Dharendra Parihar and Bhupendra Singh with lathis and knife. The learned trial Court has found that except the part statement of Bhupendra Singh PW-3, the complete statement of all other four eye-witnesses are not creditworthy and they cannot be relied upon and, therefore, the learned trial Court has rejected the statement of all the four eye-witnesses.

19- From paragraph 20 onwards, the learned trial Court discusses the statement of PW-4 Ikram Khan and in para 26 records a finding that there are serious infirmities and discrepancies in the statement of this witness and the manner in which he has narrated the story goes to show that his statement is not at all reliable. Having held so, in para 26, the learned Court refuses to rely on the statement of PW-4 and completely rejects it. There is no challenge to this part of the trial Court's finding. Thereafter, in para 27, the learned trial Court discusses the statement of PW-5 Karan Singh upto para 40 and in para 40 after analyzing the statement of this witness again finds serious defects in his statement and finally, comes to the conclusion that the statement of this witness is unreliable in as much as it is doubtful as to if PW-5 Karan Singh even witnessed the incident as narrated by him. Accordingly, witnessing of the incident by PW-5 Karan Singh itself being doubtful, his evidence is rejected by the learned trial Court. Again there is no challenge to this finding of the trial Court.

20- Thereafter, from paragraph 42 onwards, the learned trial Court discusses the statement of PW-6 Nitiraj Singh and in para 49 records a finding to say that his statement is not reliable. It is held that this witness seems to have not seen the incident at all and, therefore, his statement cannot be accepted. Finally, from paragraph 50 onwards, the learned Court below discusses the statement of PW-10 Rajendra Singh and in paragraph 59 records a conclusion to say that the statement of this witness is not at all credit-worthy. He is speaking a lie and his evidence cannot be accepted and his presence on the spot is doubtful. The learned trial Court has rejected the evidence of the 4 eye-witnesses by saying that they are not credit-worthy and even their presence at the spot is doubtful.

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21- That being so, the only eye-witness to the incident is Bhupendra Singh PW-3. With regard to this witness, the learned trial Court says that his statement is unreliable with regard to implication of 7 co-accused persons and cannot be believed. However, the learned Court below on the basis of the solitary statement of this witness Bhupendra PW-3 had convicted the appellant. Accordingly, it is seen that the conviction of the present appellant Surendra Kumar is based only on the basis of statement of PW-3 Bhupendra.

22- If the statement of Bhupendra Singh – PW/3 recorded in the Court is taken note of, it is seen that he speaks about the appellant Surendra Kumar assaulting Dhirendra Parihar with a knife on his stomach. From paragraph 3 onwards, he narrates as to how he has sustained the injury due to assaulting by the other co-accused persons and also says that the appellant Surendra Kumar caused a single knife injury on the stomach of deceased Dhirendra Parihar. However, if the F. I. R. lodged by Bhupendra Ex. P/6 is taken note of, it is seen that as per the story in the F. I. R. the incident took place at 10.00 P. M. in the night, Bhupendra was brought to the hospital around 10:30 P. M. and immediately on 10:30 P. M. when he was undergoing treatment, the FIR was registered based on his statement and thereafter his case diary statement Ex. D/1 was also recorded. In both these i.e. Ex. P/6 and Ex. D/1, he does not say that the appellant Surendra Kumar caused the injury on the person of Dhirendra Parihar with a knife on his stomach.

23- In his cross-examination, when specific questions were put to him about this omission to say about the appellant Surendra causing injury with a knife, in the FIR - Ex.P/6 and Ex.D/2, he only says that he does not know as to how this omission has occurred. It is a case where there are serious discrepancy in the statement of Bhupendra PW-3 as recorded in the case diary statement Ex. D/1 and the FIR - Ex.P/6. In the statement under Section 161 available in the case diary i.e. Ex. D/1 and the FIR - Ex.P/6, a different story is narrated than the one given in the Court. That apart, Bhupendra also says that when he was undergoing treatment in the hospital after the incident in the night, the Tehsildar came to the hospital and a

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dying declaration was also recorded (Ex. D/2) and in the dying declaration Ex. D/2, he says that the incident took place sometimes back in the night, at Jhanda Chowk when he and Dharendra Parihar were assaulted by the accused persons. He gave the names of the accused persons but he makes a specific statement in the portion marked 'P to P' of this statement Ex. D/2 to say that the co-accused Dharmendra assaulted deceased Dharendra Parihar with a knife. Accordingly, in Ex. D-2 Bhupendra comes out with a case that the injury on the person of Dharendra Parihar is caused by the co-accused Dharmendra, he does not say in this statement (D/2) that the knife injury on the stomach of the deceased is caused by the appellant Surendra. It is surprising to note that the trial Court for the purpose of considering the commission of offence by the 7 co-accused persons holds the statement of Bhupendra as unreliable and discards it completely but when it comes to conviction of the present appellant for the offence in question, only on the basis of statement of Bhupendra Singh (PW/3), the conviction is recorded. Even though, Bhupendra Singh PW-3 narrates the story implicating the applicant in the statement recorded in the Court but the statement recorded in the Court is different from the one put forth by him initially while recording the FIR - Ex.P/6. Similarly in the case diary statement Ex. D/1 and in the dying declaration Ex. D/2 also a different story is narrated than the one as stated in the Court, this vital discrepancy in the statement of this witness clearly shows that his statement is wholly unreliable.

24- If the statement of Bhupendra Singh PW-3 is left out, it would be seen that there is no evidence and material available against the present appellant Surendra Kumar with regard to commission of the offence. Even though, a knife is said to have been seized from the appellant but as already indicated hereinabove and based on the findings of the learned trial Court in paragraph 104 of the aforesaid judgment, it is clear that the existence of human blood in the knife is not proved. That being the position based on the evidence available on record, at this stage, the legal question as argued by Shri Surendra Singh, learned Senior Advocate, may be considered.

25- As far back as in the year 1957, the Hon'ble Supreme Court in the case of **Vadivelu Thevar Vs. The State of Madras, AIR 1957 SC**

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614, has laid down the principle to say that based on the nature of evidence given by a person, the same can be categorized into three; namely witnesses who are wholly reliable, witnesses who are wholly unreliable and lastly neither wholly reliable nor wholly unreliable. As far as the first two categories of witnesses are concerned, the Hon'ble Supreme Court says that there is no difficulty in accepting or rejecting the statement of such witnesses. If the statement of witnesses is wholly reliable, it can be accepted but if the statement of witnesses is wholly unreliable, it can be rejected but the problem arises when the statement of witnesses falls in the third category i.e. partly reliable and partly unreliable. It is said that the statement of this category of witness can be accepted only if any corroborative evidence is available. The matter is again considered by the Supreme Court in the case of **Vithal Pundalik Zende Vs. State of Maharashtra AIR 2009 SC 1110** and in para 8, the matter has been so dealt with by the Supreme Court in the following manner :-

“8. In Vadivelu Thevar vs. The State of Madras (AIR 1957 SC 614) this Court had gone into this controversy and divided the nature of witnesses in three categories, namely, wholly reliable, wholly unreliable and lastly, neither wholly reliable nor wholly unreliable. In the case of the first two categories this Court said that they pose little difficulty but in the case of the third category of witnesses, corroboration would be required. The relevant portion is quoted as under:

‘11. ... Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

- (1) Wholly reliable.
- (2) Wholly unreliable.
- (3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way - it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach

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or suspicion of interestedness, incompetence or subordination. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses.'

(Emphasis supplied)

26- Again in the case of **Jagdish Prasad and others Vs. State of MP, AIR 1994 SC 1251**, it has been held by the Supreme Court as a general rule that for the purpose of convicting a person, testimony of a single witness is sufficient enough provided it is reliable. It is said that there is no legal impediment in accepting the statement of a single witness for the purpose of convicting a person. The Court is not much concerned with the quantity of the evidence but it is the quality of the evidence and its material which is of importance for proving or disproving a fact. Thereafter, the Supreme Court indicates that if the testimony of a single witness is credit-worthy and trust-worthy, it can be relied upon for convicting a person. Similar principles have been considered and laid down in the case of **Lakshmi Singh and others Vs. State of Bihar AIR 1976 SC 2263** also. In the case of **Balaka Singh & others Vs. State of Punjab AIR 1975 SC 1962**, it has been held by the Supreme Court after following the principles laid in the case of **Zwinglee Ariel** (supra) that in a criminal case while analyzing the statement of the witness, the Court should make an attempt to separate the grain from the chaff, the truth from the false-hood, this could only be possible when the truth is separable from the false-hood but when the grain cannot be separated from the chaff and the truth cannot be separated from the false-hood, then the statement of the witness should not be relied upon. The matter has been so dealt with by the Supreme Court in paragraph 8:-

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“8. It is true that, as laid down by this Court in **Zwinglee Ariel v. State of Madhya Pradesh AIR 1954 SC 15**, and other cases which have, followed that case, the Court must make an attempt to separate grain from the chaff, the truth from the falsehood, yet this could only be possible when the truth is separable from the falsehood. Where the grain cannot be separated from the chaff because the grain and the chaff are so inextricably mixed up that in the process of separation the Court would have to reconstruct an absolutely new case for the prosecution by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, then this principle will not apply.”

27- If the facts of the present case and the credit-worthiness of the statement of Bhupendra PW-3 is analyzed in the backdrop of the principle as discussed hereinabove, it is clear that the statement of Bhupendra Singh PW-3 has been treated by the learned trial Court to be partly credit-worthy that is for the purpose of convicting the present appellant and partly uncredit-worthy in as much as the learned trial Court has not believed the statement and has acquitted the seven co-accused persons.

28- That being so, the statement of Bhupendra PW-3 falls in the third category as laid down by the Supreme Court in the case of **Vithal Pundalik Zende** (supra) and if that be so, then by relying on such a statement which is partly credit-worthy and partly uncredit-worthy, there should be corroborative evidence. Now, the only form of corroborative evidence available is seizure of the knife from the appellant and the non-existence of human blood on the same. In this case, even though a knife has been seized from the person of the appellant but from the documents available on record Ex. P-27 and the analysis of the same from paragraph 104 onwards, it is seen that the examination of the knife for the purpose of commission of offence or the existence of human blood is not established.

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In fact, there is no corroborative evidence to support the statement of Bhupendra, once the statement of the other four eye-witnesses are discarded.

29- If the statement of PW/3 Bhupendra Singh is analysed in the backdrop of the principle laid down in the case of **Zwinglee Ariel** (supra), it would be seen that part of his statement is found to be false so far as it pertains to the role assigned to seven co-accused with regard to the incident. Now, if the statement with regard to involvement of the appellant in the incident is analysed in the back drop of the statement of PW/3 Bhupendra Singh, particularly in the matter of discrepancy and difference in the story put forth in the Court and earlier in the FIR, the dying declaration and the case diary statement, it is very difficult for this Court to separate the truth from the falsehood with regard to the statement of this witness and record a finding. The statement of this witness in its totality cannot be accepted and it is not possible for this Court to separate the statement and place it into different compartments for the purpose of finding out as to which part is correct and which part is false. As such, it is very dangerous to rely on the statement of such a witness and convict the appellant.

30- That apart, if the entire story of the prosecution is considered, it is seen that 8 persons were prosecuted with regard to occurrence of the same incident. Five eye-witnesses were available. The statement of four eye-witnesses is found to be untrustworthy and rejected. The statement of fifth eye-witness is believed in part. It is believed for convicting one accused i.e. the appellant herein, that also for a lesser and it is rejected in the case of seven co-accused and they were acquitted of all the offences.

31- It is a case where the same evidence, which is found untrustworthy for convicting seven accused persons is found to be credit-worthy for convicting one person. This in the considered view of this Court is unsustainable.

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32- Accordingly, this appeal is allowed. The conviction of the appellant for offence under section 304 (II), of the Indian Penal Code, and sentence of rigorous imprisonment for 7 years is set aside. He is acquitted of the charges. His bail bond be released and his sureties discharged. The appellant be set free, if not required in any other matter.

33- With the aforesaid, the appeal stands allowed.

(RAJENDRA MENON)
J U D G E

Vy/-