

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.281 of 2008**

CNR No. BRHC010612272008

=====

RANJIT MAHTO, son of Late Saket Mahto, resident of village Sansa, P.S.
Naw Kothi, District Begusarai.

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr.Ramakant Sharma, Sr. Advocate
	:	Mr. Bipin Kumar, Advocate
For the Respondent/s	:	Mr.Bipin Kumar, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANSUL
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ANSUL)

Date : 01-10-2026

Heard learned counsel for the parties.

2. This appeal is directed against the judgment of conviction dated 07.02.2008 and order of sentence dated 08.02.2008 passed by learned Presiding Officer Additional Sessions Judge, F.T.C.-V, Begusarai in Sessions Trial No. 622 of 2005 by which the learned trial court has convicted the appellant and sentenced him to imprisonment for life and a fine of Rs. 10,000/- under Section 302 IPC and in default of payment of fine he shall suffer simple imprisonment for six months. The appellant is further sentenced to undergo rigorous imprisonment for eight years and a fine of Rs. 5,000/- under Section 307/34 of the Indian



Penal Code and in default of payment of fine he shall suffer simple imprisonment for three months. He has further been sentenced to undergo rigorous imprisonment for two years for the offence punishable under Section 27 of the Arms Act. The sentences were directed to run concurrently.

3. The prosecution in the instant case was initiated on lodging of Nimachandpura P.S. Case No. 10/2005 by Aruna Devi. She lodged her statement at 02:30PM on 28.02.2005 at Sadar Hospital Begusarai. She alleged that at 06:00 AM she left her home for Begusarai to attend court and for her treatment. She met Kailu Yadav near Manarpur who was also going to Begusarai to attend court. They crossed the river and then rode a minibus which was going to Begusarai. Kailu Yadav sat on the seat just before the last seat and she sat in the cabin seat. When the bus reached Bibinar near a tea shop suddenly Ranjeet Mahto (Appellant), Bhajlu Mahto, Tuko Mahto, Chhotu Mahto, Ghuran Tanti and Mukesh Mahto surrounded the bus on two motorcycles. They started firing indiscriminately into the bus through its windows. The bus stopped. Then Ranjeet Mahto and Bhajlu entered the bus. Ranjeet Mahto shot Kailu Yadav with his pistol. Kailu Yadav died. A lady also sustained a gunshot injury in the firing and she died in the bus itself. One person sustained injury to his left hand and a



lady sustained injury to her right knee. Thereafter the accused persons fled away towards west. She stated that the cause of occurrence was a criminal rivalry between Kailu Yadav and Ranjeet Mahto. She claimed that the aforesaid accused persons committed the act. The statement was recorded by the ASI of Nimachandpura police station at camp Sadar Hospital, Begusarai. Dularchand Yadav (not examined) was the witness to the FIR.

4. After investigation the police submitted charge-sheet on 27.05.2005. The case was committed to the Court of Sessions on 25.10.2005 and Sessions Trial No. 622 of 2005 was registered. Charges were framed on 03.09.2007.

5. The prosecution in support of its case has examined altogether eight witnesses and the defence examined altogether three witnesses.

6. The prosecution has marked following exhibits:-

1.	Ext-1	PMR of deceased Raj Kumari Devi dated 28.02.2005
2.	Ext-1/1	PMR of unknown dead body dt. 28.02.2005
3.	Ext-2	Fardbayan of Informant
4.	Ext-3 to Ext-3/1	The injury report of injured
5.	Ext-4	Seizure list dated 28.02.2005
6.	Ext-5	Formal FIR
7.	Ext-6	Confessional Statement of accused Ghuran Tanti

The defence has marked only one exhibit i.e. Ext-A
Visiting Register dated 28.02.2005 of Begusarai Jail



7. P.W. 1 Indradeo Mallik deposed. He is one of the injured witnesses and claimed to have sustained a gunshot injury to his left hand. In para 4 he stated that he did not identify any accused.

8. P.W. 2 Laxmi Devi, the owner of the tea stall, deposed. She did not support the prosecution case and was declared hostile.

9. P.W. 3 Komal Devi, the daughter of Laxmi Devi (owner of the tea stall), deposed. She was declared hostile.

10. Fuleshwari Devi, one of the occupants of the bus, deposed as P.W. 4. She is an injured eyewitness and sustained injury to her right knee. She was brought by the police to the police station like P.W. 1. Both P.W. 1 and P.W. 4 claimed that they regained consciousness in the Sadar Hospital. The accused persons, including the appellant, were present in the dock, and P.W. 4 clearly stated that the persons who fired were not present in the dock. She also stated in para-5 that she identified Aruna Devi, the informant (P.W. 6), and stated that Aruna Devi (Mukhiya) was not sitting in that bus. The defence has pointed out that she is an injured eyewitness and even her injury has been exhibited as Exhibit 3/1. She has not been declared hostile and she was very specific that she identified Aruna Devi as Mukhiya of her



Panchayat and she clearly stated that Aruna Devi was not a passenger of the bus.

11. P.W. 5 Nityanand Singh deposed. He was a witness to the inquest report. He stated that the ASI prepared the inquest report in his presence but the said report was not shown to him at the time of his deposition.

12. The star witness of the case, the informant Smt. Aruna Devi, wife of one Bambam Mahto, deposed as P.W. 6. She supported the prosecution case as made in the FIR. In para-4 she stated that Ranjeet and Bhajlu entered the bus and started firing. The shot fired by Ranjeet Mahto hit Kailu and shot fired by Bhajlu hit the teacher, who died. She stated that six persons were firing and that thereafter they fled away. She stated that she also fled away. She gave her statement before the police thereafter.

13. In the cross-examination she stated that three cases were pending against her and that she was not aware how many cases were pending against her husband. She stated that her husband had gone to jail thrice. She also stated that on the date of occurrence her husband was in custody. In para-13 she has also stated that her husband Bambam Mahto and Kailu Yadav both were accused in many cases together. She also stated that Ranjeet Mahto was her co-villager and she had personal knowledge with



regard to the land dispute between Ranjeet Mahto and Kailu Yadav. She stated that the disputed land was the purchased land of Kailu Yadav. She admitted that at the time of occurrence she was not the Mukhiya. She stated that the distance between the house of her husband and that of Kailu Yadav was half a kilometre and they were very good friends. She also admitted that while her husband was in custody she used to go to court and for her treatment with Kailu Yadav on a number of occasions. Kailu Yadav used to call her Bhabhi. In para 22 she stated that Jaikrishan Mahto brother of accused Ranjeet Mahto was also a candidate when she contested election of Mukhiya and Ranjeet Mahto was Mukhiya before her. In para-27 she stated that she used to go to Begusarai daily to meet her husband and she never used to sign any register. She asserted that she had not gone to meet her husband on the date of occurrence and she denied the suggestion that at 09:00AM on the date of occurrence she had gone to meet her husband. In para 32 she stated that she did not remember the names of the driver, conductor and cleaner of the bus. She also stated that she did not remember the number of the bus, and that she had not purchased any ticket in the bus. She stated that the bus was filled to capacity. In para 39 she stated that Ranjeet shot at the deceased from the gate itself. She stated that the police had not come to the place of



occurrence though she remained there for fifteen minutes. She stated that she fled away after Kailu Yadav was shot though she had good relations with his family. In para 22 she further stated that she reached the hospital at 02:30 PM. She stated that she came to Begusarai on the same mini bus in which the firing had taken place. She stated that Nimachandpura police were sitting in that bus but did not enquire anything from her.

14. Learned senior counsel for the defence, Mr. Ramakant Sharma stated that this statement of the lady at paragraph 42 does not sit well with the assertion made by the Investigating Officer. This clearly shows firstly, that the lady was making up the story and secondly, that there must have been an initial version of the lady given to the police while she was in the bus which seems to have been suppressed. He submits that it is unimaginable that the person who would turn informant at 02:30PM would not divulge the details of the case or her version to the police when she first met the police. The police, however, nowhere state that they travelled on the bus to the police station.

15. In para 43 she made another strange statement. She stated that the injured persons were in the bus but thereafter she changed it by saying that only the two deceased persons were in the bus. In para 44 she stated that she was taken from the hospital



to the Begusarai Police Station and her statement was recorded in the police station itself. The counsel for the appellant again draws the attention of the Court to the FIR itself to show that the FIR admittedly was lodged at the Begusarai Sadar Hospital and that there is nothing to show that the lady even went to the police station. The learned senior counsel further points out that this type of a statement is the hallmark of a person who is trying to fill up the gaps in his/her deposition by making up stories in order to create a foolproof story. A witness before whom an acquaintance has been shot would not forget such an important sequence of events in the immediate aftermath of the occurrence. In para-46 the lady denied the suggestion of the defence that she was not at the place of occurrence.

16. P.W. 7 Dr. Arvind Kumar Singh deposed. He conducted the postmortem of Rajkumari Devi. The gunshot wound was found to have an inverted margin and there was tattooing on the wound of entry. He also conducted the post mortem on an unknown male aged about 30 to 32 years, where also the wounds of entry had inverted margins with charring and burnt margins. The counsel for the appellant first of all challenged the identity of the person who received gun shot by stating that nobody identified the deceased before the doctor. He further states that the deceased



was sitting just before the last row and the firing allegedly was made from the gate of the bus and the distance must have been around 10 feet but the entry wounds bear tattooing and charring, which is not possible in case of firing made from a distance of more than six feet.

17. P.W. 8 the Investigating Officer of the case Bhagwan Prasad Gupta deposed. He stated that on 28.02.2005 at 02:30 PM he recorded the statement of the informant, Aruna Devi (P.W. 6), in Sadar Hospital, Begusarai. He further stated that on 28.02.2005 at 09:30 in the morning they received a rumour that firing had taken place at Bibinar. He recorded a Sanha No. 487 dated 28.02.2005 and proceeded to the place of occurrence. When he reached the place of occurrence he found Bus No. 2937 standing there. They saw the dead body of an unknown person and the dead body of a lady. He also found the empty cartridge and blood on the seat. The bus was facing in the direction of Begusarai. In para-4 he stated that in village Samsa he came to know that Ranjeet Mahto had committed the occurrence with his gang. He stated in para-5 that he recorded the statement of the lady. He stated that in the hospital itself he recorded the statement of injured Indradeo Mallik P.W.-1 and injured Fuleshwari Devi P.W.-4 and they supported the occurrence.



18. In para-15 he proved the injury report of P.W. 1 and P.W.4. He also exhibited the seizure list where the empty cartridge and the front portion of the bullet were recovered. He also proved the confessional statement of Ghuran Tanti, Ext. 6.

19. In para 26 he stated that he did not get the dead body of Kailu Yadav identified. He stated that the informant came to the hospital herself and her statement was recorded there and the injured were not present when the statement of informant was being recorded. He further stated that both the injured had not stated whether the informant was present in the bus at that point of time. In para 32 he stated that the statements of the bus driver, conductor and cleaner were also recorded during investigation and none of them had stated that the informant was traveling in the bus. In para 33 he stated that the informant had not stated in her fardbeyan or further statement that she came to the police station on the vehicle that was carrying the dead body.

20. The defence examined D.W. 1 Krishnandan Mahto. He was the owner of the vehicle bearing Registration No. BR-9C-4155 (a Marshal vehicle). He stated that Aruna Devi asked him to give her the vehicle for going to Begusarai and that he started with her at 08:30 AM. The driver of the vehicle was Virendra. He stated that Aruna Devi boarded the vehicle at Rajakpur. Then at 09:30



AM when he reached Begusarai Aruna Devi told him that her husband was in jail and she had to meet him. In para-3 he stated that the vehicle stopped in front of Begusarai Jail. They stayed there for an hour.

21. He stated that in the jail itself the news started spreading that Kailu Yadav had been killed. Then Aruna Devi started making enquiry and he went to the garage. Nothing could be elicited from him which would cast any doubt on his deposition.

22. D.W. 2 Birendra Kumar Mahto deposed. He completely supported the statement of the vehicle owner in all material particulars. Nothing could be elicited from him in his cross-examination which could be of relevance in disbelieving his version.

23. D.W. 3 is Suresh Prasad. He stated that on the orders of the court he had presented the visitors' register of the Begusarai Jail dated 28.02.2005. He was a constable at Begusarai Jail. He stated that at Serial No. 36 the name of Aruna Devi is recorded as one visiting Bambam Mahto and it carries the stamp of Jail Superintendent and his signature. He stated that the visiting hours are from 08:00 AM to 12:00 noon.



24. The learned senior counsel Mr. Ramakant Sharma for the appellant submits that to begin with there is a gap of five hours in recording the statement of the informant. The gap assumes importance as the informant claimed to be a passenger of the bus in which the killing took place and she also claimed that she met the police over there and she was taken to the Hospital in the bus in which the dead body was kept. Still her statement was not recorded by the police at that time which could have been the first version. Her statement was recorded by the police at 02:30PM at Begusarai Sadar Hospital. Though she states that she got her statement recorded at the police station.

25. The senior counsel further submits that there are four witnesses who are independent. Two of them, P.W. 2 and P.W. 3, are the owner of the tea shop and her daughter respectively. They have not supported the prosecution case at all.

26. Learned senior counsel further stated that there are two injured eyewitnesses. It is submitted by him that had the informant been an occupant of the bus, the names of the assailants would have been disclosed to them by the informant just after the occurrence. This becomes more relevant in the backdrop that she claimed that she was there at the place of occurrence for fifteen minutes after the occurrence but the police did not come there. In



the same breath she has also stated that she sat with the police on the bus in which two dead bodies were being carried to the police station. The learned senior counsel states that it is not at all possible that a witness who knows the assailant would not disclose the name to the police or to other injured persons on the spot at the first instance. Strangely though, even in their statement before police the witnesses have not stated anything about the identity of the assailants. They have also not stated anything about the identity in their deposition. The most interesting part is the deposition of the injured Fuleshwari Devi (P.W. 4). She clearly saw this appellant in the dock and still stated that none of the assailants was in the dock. She also very clearly stated that Aruna Devi (Mukhiya) was not sitting in the bus. Though she clearly stated that she identified the Mukhiya Aruna Devi (P.W.6) of Samsa Panchayat.

27. The Investigating Officer in his statement at para-32 has clearly stated that he has taken the statement of bus driver, conductor and cleaner and none of them had stated that the informant was also traveling in the bus.

28. The law is very much clear with regard to the status of a witness who was independent and was also injured in the occurrence.



29. In case of *State of U.P. Vs. Naresh* reported in *(2011) 4 SCC 324*, it has been observed that:-

*“27. The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. (Vide *Jarnail Singh v. State of Punjab* [(2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107] , *Balraje v. State of Maharashtra* [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] and *Abdul Sayeed v. State of M.P.* [(2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262])”*

30. Further in the case of *Balu Sudam Khalde v. State of Maharashtra*, reported in *(2023) 13 SCC 365*, Hon’ble Supreme Court gave observation as to how the testimony of an injured person is to be considered. It was held that:-



26. When the evidence of an injured eyewitness is to be appreciated, the undernoted legal principles enunciated by the courts are required to be kept in mind:

26.1. The presence of an injured eyewitness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

26.2. Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

26.3. The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

26.4. The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

26.5. If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

26.6. The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.



31. The defence has also emphasized that the first information with regard to the occurrence was recorded by the police in Sanha No. 478 which is not on record. It is also stated that from the sequence of events immediately following the shootout it is clear that the informant claims to have been with the injured for fifteen minutes and also met the police on arrival at the place of occurrence and went with them to either police station or the hospital. Contrary to her assertion, her statement was recorded by the police in the hospital itself. All this happened in the immediate aftermath of the occurrence, yet the names of the accused who committed the crime did not travel from the informant to the injured. They have not even stated that later on they came to know that it was done by the gang of Ranjeet Mahto.

32. The prosecution has examined all the witnesses who had every opportunity to see the occurrence and identify the assailant. Fuleshwari Devi (P.W. 4) outrightly denies the presence of both the accused and the informant at the place of occurrence. Others like the owner of tea stall (P.W.2) and her daughter (P.W. 3) and another injured witness P.W.1 have not placed either the informant or the accused at the place of occurrence.



33. In this backdrop, if one examines the version of the defence coming through the defence witness the prosecution has not been able to do anything to discredit the defence witness. The gaping holes in the prosecution story, which create doubt about the presence of the informant at the place of occurrence, are fortified by the version of the defence witnesses as recorded earlier.

34. Before we examine the evidence of P.W. 6 Aruna Devi, it would be useful to notice the manner in which the law relating to the testimony of a solitary witness has developed.

35. Section 134 of the Indian Evidence Act, 1872 expressly provides that no particular number of witnesses shall in any case be required for the proof of any fact. The provision, therefore, rejects the notion that the law attaches greater value to evidence merely because it comes from a plurality of witnesses. But the history of the law also makes it clear that the absence of a requirement as to number has never meant the absence of a requirement as to quality.

36. The principle can be traced to the Privy Council in *Mohd. Sugul Esa Mamasan Rer Alalah v. The King*, AIR 1946 PC 3. The case arose out of a charge of murder in which the prosecution substantially relied upon the evidence of a girl of about ten or eleven years of age. The evidence of the girl was



unsworn, as the trial Court considered that although she was competent to testify, she did not understand the nature of an oath. The objection before the Privy Council was that no conviction could properly be founded upon such solitary and unsworn evidence in the absence of corroboration.

37. The contention was not accepted. The Privy Council recognised that under the law applicable in India such evidence was legally admissible whether corroborated or not. But the significance of the decision does not lie merely in the proposition that one witness is sufficient in law. Its deeper significance lies in the distinction between admissibility and weight. The law does not impose a universal rule that the testimony of one witness must necessarily be corroborated. Whether corroboration is required as a matter of prudence depends upon the character of the evidence and the circumstances in which it is given. Thus, the Privy Council recognised, at the very foundation of this branch of law, that the question is not how many witnesses the prosecution has produced, but how much confidence the evidence of the witness deserves.

38. Para 9 of the judgment reads as under: “....In England where provision has been made for the reception of unsworn evidence from a child it has always been provided that the evidence must be corroborated in some material particular



implicating the accused. But in the Indian Act there is no such provision and the evidence is made admissible whether corroborated or not. Once there is admissible evidence a Court can act upon it; corroboration, unless required by statute, goes only to the weight and value of the evidence. It is a sound rule in practice not to act on the uncorroborated evidence of a child, whether sworn or unsworn, but this is a rule of prudence and not of law.”

39. The principle was thereafter authoritatively explained by the Supreme Court in *Vadivelu Thevar v. State of Madras*, AIR 1957 SC 614. In paragraph 10, while considering the earlier authorities including the decision of the Privy Council, the Supreme Court stated the general propositions governing the testimony of a solitary witness. A Court can act upon the testimony of a single witness even though it is uncorroborated, and one credible witness may outweigh the evidence of a number of witnesses of indifferent character. Corroboration is not to be insisted upon as an inflexible rule unless required by statute. At the same time, the nature of the evidence may, as a matter of judicial prudence, require corroboration, and whether such corroboration is necessary must depend upon the facts and circumstances of each case.



In paragraphs 11 and 12, the Supreme Court gave a more precise statement of how the principle is to be applied.

11. The second ground of attack against the veracity of the first witness is that she had stated that Shanmugham Thevar, Prosecution Witness 3, had also seen the first appellant giving the deadly blows to her husband, and that the assailant continued giving his blows in spite of protests of PW 3. This argument proceeds upon the assumption that Prosecution Witness 3 is telling the truth and that, therefore, his evidence effectively contradicts that of the first witness. PW 3 was, as indicated above, cross-examined by the Public Prosecutor with reference to his previous statement before the Investigating Police Officer (PW 14). PW 14 has stated that before him PW 3 had stated just the contrary of what he stated in court. The statements of PW 3 at the earlier stage, before the police, and later when examined in court, may or may not have been false, but certainly both cannot be true. Hence, it cannot be said that the evidence of PW 3 in court was the true version. That being so, his evidence in court is not strong enough to wipe out the evidence of the first witness on the ground that it is contrary to what PW 3 had stated. It is, thus, clear that none of the grounds urged in support of the contention that the evidence of the first witness is unreliable, has been made out.

12. On the other hand, the first witness, being the most important witness from the point of view of the prosecution, was put to a severe test in her cross-examination. She has frankly made admissions in her cross-examination, which throw a very lurid light on the



past life of her deceased husband. She admitted that he had been transported for life for having committed a murder and that after his release also, he had been sent to jail twice for having caused cut injuries to others. If the first witness were inclined to tell falsehoods or at least to conceal her husband's past, she could have taken shelter behind failing memory or want of information—not an uncommon characteristic of prevaricating witnesses. Her evidence, read as a whole, rings quite true, and we have no hesitation in acting upon it. It is true that her evidence in court has been sought to be contradicted by the evidence of PWs 2 to 4, but the latter set of witnesses have been shown to be not reliable because they appear to have made different statements at different stages for reasons of their own. Their testimony does not inspire confidence and we cannot, therefore, brush aside the testimony of the first witness as compared to the evidence of PWs 2 to 4. The testimony of the first witness is consistent with what she has stated in her first information report at the police station without any avoidable delay, within less than an hour of the occurrence. It cannot, therefore, be said that her statement in court, is an afterthought, or the result of tutoring by other interested persons. Her story of the double attack, first on the front, and subsequently on the back and side of the victim, is also consistent with the medical evidence as deposed to by the Medical Officer, PW 8. It is not necessary to set out in detail the dozen incised gaping wounds on the person of the deceased, which are all set out in extenso in the judgment of the learned Sessions Judge who has written a very careful and satisfactory judgment.



40. That classification is of considerable importance. It shows that the law does not proceed on the simple proposition that the testimony of one witness is either sufficient or insufficient. The decisive consideration is the quality of that testimony. A solitary witness who is found to be wholly reliable may be sufficient. A witness who is wholly unreliable cannot support a conviction. But where the Court finds itself unable to place the witness in either of those two clear categories, prudence requires that the testimony should receive assurance from other reliable evidence before it is made the foundation of a conviction.

41. That principle was further given a clear name, “Sterling Witness” in ***Rai Sandeep @ Deepu v. State (NCT of Delhi), (2012) 8 SCC 21***. In paragraph 22, the Supreme Court explained who can properly be described as a sterling witness. Such a witness must be of very high quality and calibre and his or her version must be unassailable.

22 In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant



would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the



offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.

42. The Supreme Court in *Naresh @ Nehru v. State of Haryana, (2023) 10 SCC 134 : 2023 INSC 889*, applied this principle in a prosecution under Section 302 read with Section 149 of the Indian Penal Code. In paragraph 16, the Court reiterated that an eyewitness, when relied upon as the principal foundation of conviction, must be of very sterling quality and calibre.

43. That is the legal framework within which we have to examine the evidence of P.W. 6 Aruna Devi as she remains the sole eye witness to the occurrence. We are not concerned with the proposition whether, as a matter of law, a conviction can be based upon the evidence of one witness. The real question is whether this particular witness possesses that quality of reliability which the law, beginning with the Privy Council and moving through *Vadivelu Thevar* to the later formulation in *Rai Sandeep* and *Naresh @ Nehru*, requires before her solitary testimony can safely sustain a conviction for murder.

44. That when these principles are brought to the present record, the problem is not one of rejecting a solitary witness merely because she is solitary. It is whether her account can



withstand the same tests which the Supreme Court applied in those cases: her presence at the scene, her conduct immediately thereafter, the consistency of her earliest version with her deposition, and the existence of independent evidence capable of corroborating the identification. On each of these aspects the record calls for close scrutiny.

45. That the first circumstance which goes to the very root of the testimony of P.W. 6 is her own account of where and how her statement was recorded. The fardbeyan, Ext. 2, records that it was recorded at 2.30 P.M. at Sadar Hospital, Begusarai. The Investigating Officer, P.W. 8 Bhagwan Prasad Gupta, has also specifically deposed that the fardbeyan of Aruna Devi was recorded at 2.30 P.M. at Sadar Hospital. In her deposition, however, P.W. 6 stated that her statement was taken at Begusarai Police Station after she was brought there from the hospital. This is not a minor variation concerning an insignificant detail. The place at which the first account of a double murder was allegedly recorded is itself a material circumstance in assessing the reliability of that account.

46. The contradiction becomes more significant when her evidence regarding her movements after the occurrence is examined. P.W. 6 stated that after the occurrence she reached



Rajaura from the place of occurrence by a Tam Tam, again boarded the same mini bus in which the occurrence had taken place and came to Begusarai. She further stated that police personnel of Nimachandpura were present in the bus. She also stated that the injured persons were in the bus, though immediately thereafter she denied their presence. The Investigating Officer, who had reached the place of occurrence soon after the information was received, has not spoken of any such journey of the injured persons and the informant in the bus to the police station. The account, therefore, does not merely suffer from a difference in narration. It introduces an important circumstance which finds no corresponding support from the Investigating Officer.

47. The significance of this circumstance is heightened by the fact that the bus itself was available to the police. P.W. 8 states that when he reached the place of occurrence, the Tata bus was standing there and that dead bodies, blood, bullet material and empty cartridges were found in it. He further stated that when he subsequently revisited the place of occurrence during investigation, the bus was no longer there. Yet the case diary, according to his evidence, does not record the distance between the cabin and the last seat of the bus. The prosecution thus had the



physical vehicle before the investigating agency, but the investigation did not furnish the independent particulars which could have tested the precise account given by P.W. 6 about her position inside the bus.

48. The next and more serious circumstance concerns the jail record. The defence produced the visiting register of District Jail, Begusarai, which was proved by D.W. 3 Suresh Prasad. The register dated 28 February 2005 records the name of Aruna Devi as a visitor to Bambam Mahto at Serial No. 36. It is true that the register does not mention the time at which the visit took place. That circumstance by itself may not conclusively establish her presence in the jail at the precise time of the occurrence. But it is a contemporaneous official record which places her at the District Jail on the very date of the occurrence and directly supports the defence version regarding her presence there.

49. The jail register does not stand alone. D.W. 1 Krishnandan Mahto and D.W. 2 Birendra Kumar Mahto deposed that Aruna Devi had reached the District Jail, Begusarai, by the vehicle bearing Registration No. BR-9C-4155 and that she received information regarding the murder of Kailu Yadav at the jail. The value of this evidence has to be considered not in



isolation but along with the contemporaneous register and the internal inconsistencies in the prosecution version regarding Aruna Devi's movements.

50. There is another important circumstance which materially affects the claim of P.W. 6 to have been an eyewitness. P.W. 4 Fuleshwari Devi was herself an injured witness. She stated that she did not identify either of the persons who had opened fire. More importantly, when the accused persons were standing in the dock, she specifically stated that the persons present in the dock were not the persons who had opened the fire. She further stated that Aruna Devi, whom she knew as the Mukhiya of Samsa Panchayat, was not in the bus. Thus, the evidence of an injured witness does not merely fail to corroborate the identification made by P.W. 6. It affirmatively contradicts the claim of P.W. 6 regarding her presence in the bus.

51. P.W. 1 Indradeo Mallik, the other injured witness, also supports the factum of firing upon the bus and the injuries sustained by him, but he candidly stated that he did not identify any of the accused persons. He further explained that there was a crowd in the bus and that he could not identify the accused by their faces. His evidence, therefore, corroborates the occurrence but not the identity of the assailants. The distinction is important.



52. The evidence of P.W. 2 Laxmi Devi, the owner of the tea shop near which the occurrence is alleged to have taken place, and P.W. 3 Komal Devi, her daughter, does not advance the prosecution case regarding identity. Both did not support the prosecution and were declared hostile. Thus, the independent witnesses available at the very place where the bus was allegedly surrounded do not furnish the corroboration necessary to strengthen the identification made by P.W. 6.

53. The trial Court itself recorded that, out of the witnesses of fact, only Aruna Devi had deposed in favour of the prosecution case against Ranjeet Mahto and Ghuran Tanti, while P.Ws. 2 and 3 were hostile and P.Ws. 1 and 4, though injured, had not identified the accused. The prosecution case regarding identity was therefore not supported by a body of independent eyewitness evidence.

54. The position becomes still more difficult when the evidence of the owner and driver of the bus is considered. The defence examined the persons concerned with the Marshal vehicle which the informant boarded to come to Begusarai as D.W. 1 and D.W. 2, and the record indicates that the police had examined the driver and owner of the bus on which firing took place, during investigation. Yet neither of these persons was produced by the



prosecution to establish that Aruna Devi was travelling in the bus at the time of occurrence. Where the very presence of the solitary eyewitness is disputed by contemporaneous material and defence evidence, the absence of the most natural witnesses who could have resolved that question assumes significance.

55. There is also a material question concerning the identity of the male deceased. The fardbeyan recorded the name of Kailu Yadav, but the post mortem examination conducted at 3.10 P.M. was of an unknown male aged about 30 to 32 years. The Investigating Officer admitted that although the name Kailu Yadav appeared in the fardbeyan, no application was made at the District Hospital to incorporate the name of the deceased in the post mortem report. The medical evidence, therefore, establishes that the unknown male died of firearm injuries. It does not, by itself, establish that the unknown male was Kailu Yadav. That link also depends upon the credibility of the prosecution witnesses and the investigation.

56. The medical evidence establishes the occurrence of firing and the homicidal nature of the deaths, but it does not identify the assailant and does not establish the presence of Aruna Devi in the bus. The distinction between proof of occurrence and proof of identity must be maintained throughout. The prosecution



has established that a firing took place. The question is whether it has proved beyond reasonable doubt that the appellant was the person responsible for the deaths and injuries.

57. The evidence of P.W. 6 also contains an internal difficulty concerning the physical setting of the bus. She stated that the bus was fully packed with passengers. She further stated that Ranjeet Mahto opened fire from the gate of the bus. She described Kailu Yadav as sitting on a two seater. The trial Court itself noticed this aspect while considering the defence argument. The point is not whether every passenger must necessarily have sustained an injury. The point is that the physical circumstances described by P.W. 6 were capable of being independently tested, but the investigation did not preserve the relevant measurements and did not produce the natural witnesses who could have confirmed her position and visibility.

58. The defence case regarding the presence of Aruna Devi at the District Jail cannot be rejected merely because the jail register does not contain the time of visit. The correct approach is to consider its cumulative evidentiary value. The register is contemporaneous. It is proved by a jail official. Two defence witnesses speak to her arrival at the jail and the receipt of information regarding the murder there. Against this stands the



testimony of P.W. 6, whose account of the place of recording of her first statement is contradicted by the fardbeyan and the Investigating Officer, whose account of her journey back in the same bus is unsupported by the investigating record, and whose presence in the bus is specifically denied by P.W. 4.

59. These are not discrepancies which can safely be brushed aside as normal errors of memory. A witness may forget peripheral details. But whether she was in the bus at all, where her first statement was recorded, how she travelled to Begusarai after the occurrence, and whether she was present in the bus when an injured eyewitness says she was not, go to the foundation of her testimony. These circumstances directly concern her opportunity to see the occurrence and her subsequent conduct.

60. The case therefore falls for consideration under the third category recognised in *Vadivelu Thevar*. We are unable to place P.W. 6 in the first category of a wholly reliable witness whose evidence is above reproach or suspicion. At the same time, it is unnecessary to pronounce her wholly unreliable in every respect. Her account of the occurrence may contain elements which are true, particularly because the occurrence itself is independently established. But the law does not permit us to separate her identification of the appellant from the circumstances



in which she claims to have witnessed him and then accept that part mechanically. Where the witness is not wholly reliable, corroboration in material particulars becomes necessary.

61. Such corroboration is conspicuously absent on the crucial question of identity. The injured witnesses establish the firing but do not identify the appellant. P.W. 4 goes further and states that the persons in the dock were not the assailants and that Aruna Devi was not in the bus. The tea shop witnesses do not identify the appellant. The bus owner and driver do not provide the prosecution with the expected corroboration of Aruna's presence. The jail register provides contemporaneous evidence pointing in the opposite direction. The Investigating Officer does not support the additional account given by Aruna regarding her journey in the bus to Begusarai. In these circumstances, the solitary testimony of P.W. 6 cannot be treated as sterling evidence.

62. Section 34 of the Indian Penal Code cannot cure this defect. Common intention is not a substitute for proof of participation. Before the doctrine of common intention can operate against an accused, the prosecution must first establish by reliable evidence that the accused participated in the criminal act. If the evidence of the sole eyewitness does not safely establish the



identity and participation of the individual accused, Section 34 cannot be invoked merely to bridge the evidentiary gap.

63. The investigation is lacking to say the least. The Police did not identify the deceased at the time of post mortem. No sketch map of the PO was made. No murder weapon was recovered. No TIP was attempted. Though defective investigation may not lead to acquittal but if it fails to connect the dots of prosecution case, it ultimately has a role in acquittal of the accused.

64. On the totality of the evidence, we are therefore unable to regard P.W. 6 Aruna Devi as a witness of such sterling quality that her testimony can safely sustain the conviction of the appellant without independent corroboration. The infirmities in her testimony strike at the very root of her claimed presence at the place of occurrence and her opportunity to identify the assailants.

65. In the result, this Appeal is allowed.

66. Accordingly, the judgment of conviction dated 07.02.2008 and order of sentence dated 08.02.2008 passed by learned Presiding Officer Additional Sessions Judge, F.T.C.-V, Begusarai in Sessions Trial No. 622 of 2005 is hereby set aside. Consequently, the appellant of the present appeal is acquitted of the charges levelled against him.



67. If the appellant is on bail since 04.11.2009. The appellant is discharged from the liabilities of his bail bond.

68. Office is directed to send back the trial court records along with a copy of this judgment to the learned trial court, forthwith.

(Sanjay Kumar Singh , J)

(Ansul, J)

amitkr/-

AFR/NAFR	AFR
CAV DATE	21.09.2026
Uploading Date	01.10.2026
Transmission Date	01.10.2026

