CASE NO.:
Appeal (crl.) 1250 of 1995

PETITIONER:
Nathu Singh Yadav

RESPONDENT:
State of Madhya Pradesh

DATE OF JUDGMENT: 22/11/2002

BENCH:
N.Santosh Hegde & B.P.Singh.

JUDGMENT:
J U D G M E N T

SANTOSH HEGDE,J.

The appellant and nine others were accused of having committed the murder of one Maniram on 21.12.1983 at about 10 a.m. in Usranhar, District Chhatarpur. The motive alleged is one pertaining to the elections of the panchayat. The prosecution case is that the appellant and the other accused persons waylaid the deceased and on the exhortation of the appellant, A-7 who was the son of the appellant fired at the deceased with a Rifle and A-10 fired with a 12 bore gun while the other 7 accused persons who were carrying lathis were also present. Accordingly, they were all charged for offences punishable under Section 302 read with Section 109 IPC and the appellant, A-7 and A-10 were charged under Section 30 of the Indian Arms Act.

The trial court acquitted the 7 accused persons who were alleged to have been present with the lathis at the time of their attack and convicted the appellant, A-7 and A-10 of the offence punishable under Section 302 read with Section 109 IPC, and awarded life imprisonment and further convicted them under Section 30 of the Indian Arms Act and sentenced them to undergo RI for three months on that count.

The three convicted accused including the appellant preferred an appeal before the High Court of Madhya Pradesh at Jabalpur. During the pendency of the appeal, A-7 died and the appeal stood abated against him. The High Court on reconsideration of the evidence of record came to the conclusion that the prosecution has not established the participation of Sheo Pal Singh (A-7), even though, according to the prosecution, he had fired from a 12 bore gun, no pellet injuries were found on the body of the deceased, hence, acquitted him. While in regard to the appellant, even though it came to the conclusion that the appellant did not cause any injury to the deceased, still on the ground that the appellant had exhorted the other accused persons to kill the deceased, convicted the appellant of an offence punishable under Section 302 read with Section 109 IPC and imposed a sentence of life imprisonment. The High Court also confirmed the sentence imposed on the appellant under Section 30 of the Indian Arms Act on the ground he had knowingly allowed the fire-arm belonging to him to be used by A-7.

We have heard the learned counsel for the parties and perused the record. It is seen so far the 7 accused persons who allegedly carried the lathis, both the courts below have rejected the prosecution case which included the part of exhortation by the appellant. So far as A-10 Sheo Pal Singh's participation which included firing from a 12 bore gun is concerned, the High Court has disbelieved the same holding that there was no pellet injury on the deceased. Prosecution has not challenged this finding of the courts below. So far as causing of injury by A-7 is concerned the same has become final by the death of that accused. What is now left for our consideration is the part played by the appellant. On the facts of this appeal, we find it difficult to believe this part of the prosecution case also which involves the appellant, more so when the substantial part of prosecution case is not accepted by the courts below. On the facts of this case we find it difficult to separate the prosecution case of the appellant from that of other acquitted accused so as to base a conviction more so in view of the fact appellant himself did not take part in the actual attack on the deceased. This court in the case of Ugar Ahir & Ors. Vs. The State of Bihar (AIR 1965 SC 277) has held :

"The maxim falsus in uno, falsus in omnibus (false in one thing, false in every thing) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroiders or embellishments. It is, therefore, the duty of the court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest. That is what the courts have done in this case. In effect, the courts disbelieved practically the whole version given by the witnesses in regard to the pursuit, the assault on the deceased with lathis, the accused going on a bicycle, and the deceased wresting the bhala from one of the appellants and attacking with the same two of the appellants, the case that the accused attacked the witnesses, and the assertion of the witnesses of their being disinterested spectators. If all this was disbelieved, what else remained ? To reverse the metaphor, the courts removed the grain and accepted the chaff and convicted the appellants. We, therefore, set aside the conviction of the appellants and the sentence passed on them."

We think this precautionary principle laid down by this Court in the above cited case applies aptly to the facts of this case. We do not think it is safe to place reliance on the evidence adduced by the prosecution in regard to the role played by the appellant especially because the courts below themselves have refused to place any reliance on the very same evidence in regard to the role attributed to the other accused persons who have been acquitted by the courts below. Therefore, giving the benefit of doubt, we allow this

appeal, set aside the conviction and sentence imposed on the appellant. The bail bonds shall stand discharged.