

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.892 of 2013

Arising Out of PS.Case No. -237 Year- 2005 Thana –Sheikhpura District- Sheikhpura

1. Pappu Yadav, Son Of Jodha Yadav, Resident Of Village- Kare, Police Station-
Sheikhpura District - Sheikhpura.

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 933 of 2013

Arising Out of PS.Case No. -237 Year- 2005 Thana - Sheikhpura District- Sheikhpura

1. Rabindra Yadav S/O Late Ram Swarup Yadav
2. Mahesh Yadav S/O Arjun Yadav
3. Bhuneshwar Yadav S/O Late Ragho Yadav
4. Dani Yadav S/O Bhuneshwar Yadav
5. Surendra Yadav S/O Late Ramswarup Yadav
All residents of Village - Kare, P.S. Sheikhpura, District - Sheikhpura

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 989 of 2013

Arising Out of PS.Case No. -237 Year- 2005 Thana - Sheikhpura District- Sheikhpura

1. Balmiki Yadav S/O Late Chando Yadav
2. Subelal Yadav S/O Late Chando Yadav
3. Manoj Yadav S/O Shri Shivdhari Yadav
All residents Of Village- Kare, P.S.- Sheikhpura, District- Sheikhpura

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 1011 of 2013

Arising Out of PS.Case No. -237 Year- 2005 Thana - Sheikhpura District- Sheikhpura

1. Shyamdeo Yadav Son Of Late Ragho Yadav R/O Village-Kare, P.S.-Sheikhpura,
Distt-Sheikhpura

.... Appellant/s

Versus



1. The State Of Bihar

.... Respondent/s

Appearance :

(In CR. APP (DB) No.892 of 2013)

For the Appellant/s : Mr. Ajay Kumar Thakur
Mr. Sajid Salim Khan

For the Respondent/s : Mr. S.N. Prasad, APP

For the Informant : Mr. Vikram Deo Singh

(In CR. APP (DB) No.1011 of 2013)

For the Appellant/s : Mr. Amit Sharma
Mr. Javed Aslam

For the Respondent/s : Mr. S.N. Prasad, APP

For the Informant : Mr. Vikram Deo Singh

(In CR. APP (DB) No.989 of 2013)

For the Appellant/s : Mr. Surendra Singh, Sr. Advocate
Mr. Akhileshwar Prasad Singh, Sr. Advocate
Mr. Sudhir Kumar Upadhyay

For the Respondent/s : Mr. A.Sharma, APP

For the Informant : Mr. Vikram Deo Singh

(In CR. APP (DB) No.933 of 2013)

For the Appellant/s : Mr. Amit Sharma

For the Respondent/s : Mr. Chandra Bhushan Prasad (App)

For the Informant : Mr. Vikram Deo Singh

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
and
HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date: 24 -04-2017

In all 10 appellants viz. Balmiki Yadav, Manoj Yadav, Subelal Yadav (appellants in Cr. Appeal (DB) No. 989 of 2013), Pappu Yadav (appellant in Cr. Appeal (DB) No. 892 of 2013), Ravindra Yadav, Mahesh Yadav, Bhuneshwar Yadav, Dani Yadav and Surendra Yadav (appellants in Cr. Appeal (DB) No. 933 of 2013) and Shyamdeo Yadav (appellant in Cr. Appeal (DB) No. 1011 of 2013) have filed the present set of appeals aggrieved by the judgment of conviction and order of sentence dated 30.08.2013 passed by learned Additional Sessions Judge, Sheikhpura in S.T. No. 659 of



2009 (arising out of Sheikhpura P.S. Case No. 237 of 2005) whereby the appellants were held guilty under Sections 302/149, 147 and 148 of Indian Penal Code and sentenced to undergo R.I. for life, R.I. for 01 year and R.I. for 02 years respectively. Each appellant was also imposed a fine of Rs. 5,000/- and in default thereof to further undergo S.I. for one year.

2. As the submissions have been made with reference to the serial numbers at which the accused(s) stand in the impugned judgment, we propose to deal with them accordingly. Hereinafter accused Balmiki Yadav shall be referred as A/1, Manoj Yadav as A/2, Subelal Yadav as A/3, Ravindra Yadav as A/4, Pappu Yadav as A/5, Mahesh Yadav as A/6, Shyamdeo Yadav as A/7, Bhuneshwar Yadav as A/8, Dani Yadav as A/9 and Surendra Yadav as A/10 respectively.

3. The prosecution case, as unfolded in the fardbeyan (Ext.3) lodged by Rajaram Yadav (P.W.-6) on 02.09.2005 at 15.00 hours recorded by the Sub-Inspector of Police, Sheikhpura Sri Brahmdeo Tiwary at Sub-Divisional Hospital, Sheikhpura, in brief, is that on 02.09.2005 at about 8.30 in the morning, the informant along with his brother Sheo Balak Yadav (deceased) proceeded from their village to Barbiga where a cattle fair was organized to purchase buffalo. At about 9 o'clock, as they reached near a culvert close to *tatti* bridge, all of a sudden A/1, A/2 and A/3 who were hiding themselves beneath the culvert, appeared armed with iron rod and



started assaulting the victim. In the meanwhile, A/7 appeared, armed with dagger, and started assaulting the victim and thereafter snatched the cash amount carried by him. In the meanwhile, remaining other appellants arrived there, armed with dagger, (knife) and started assaulting him. The accused persons also chased the informant to assault whereafter he ran to save him and also raised alarm which attracted P.W.-5 (Haro Yadav), P.W.-3 (Dinesh Yadav), Krishna Yadav (not examined), Baleshwar Yadav (P.W.-1) and Shanker Yadav (P.W.-4) who ran towards the place of occurrence whereafter the accused persons left assaulting the victim and escaped. With the help of witnesses and co-villagers, the injured was carried to the clinic of Dr. Purushottam where first aid was given and thereafter they carried the injured to the Sub-Divisional Hospital, Sheikhpura where, in course of treatment, he died. The motive for the assault was alleged as previous animosity between the parties. The F.I.R. was lodged wherein P.W.-1 also put his signature and the informant affixed his L.T.I. As the victim had died, the death inquest proceeding was carried out at the hospital itself on 02.09.2005 at 4.45 p.m. on which P.W.-1 and Krishna Yadav (not examined) put their signatures. The body was sent for post mortem examination. P.W.-11 Dr. Arun Kumar Sinha, who was then posted at the Sadar Hospital, conducted the autopsy on 03.09.2005 at 8.20 a.m. and submitted the post-mortem report (Ext.-2). The I.O. recorded the statement of the witnesses and,



on finding the accusations true submitted charge-sheet against A/4 to A/10. A/1 to A/3 were not sent up for trial as the police found substance in their plea of alibi. Cognizance was taken on 23.06.2006 and the case was committed to the Court of Sessions for trial. A criminal revision was preferred by the informant against the order taking cognizance and on the basis of the observations made therein, the learned Chief Judicial Magistrate later took cognizance on 17.06.2008 against A/1 to A/3. The case was then committed to the Court of Sessions on 11.09.2009. On transfer, the same came on the file of learned Trial Judge where charges were framed and read over to the appellants to which they pleaded not guilty. The defence of the appellants is complete denial of their involvement and false implication due to previous animosity. A/1 to A/3, however, put up a specific defence that on the alleged date and time of occurrence, they were not present at Sheikhpura.

4. In order to bring home the charges, the prosecution, out of 32 named witnesses in the charge-sheet, examined 13 prosecution witnesses. We would classify those witnesses. P.W.-1 Baleshwar Yadav, P.W.-3 Dinesh Yadav, P.W.-4 Shankar Yadav, P.W.-5 Haro Yadav and P.W.-6 Rajaram Yadav (informant) have projected themselves as eye witnesses to the occurrence whereas the other witnesses have proved the attending facts and circumstances of the case. P.W.-11 Dr. A.K.Thakur is the autopsy surgeon and has proved



the post mortem report as Ext.-2. P.W.-12 B. Tiwary and P.W.-13 Sahdeo Thakur are the two Investigating Officers of the case. Out of whom P.W.-13 is a formal witness who after taking over the investigation had only submitted the charge-sheet. However, P.W.-2 Sadal Yadav and P.W.-10 Shanti Devi were declared hostile by the prosecution. The defence also adduced oral evidence and examined Dr. S.K. Chaudhary (D.W.-1) on the point of alibi of A/1 and Sheoshankar Prasad Singh (D.W.-2) on the point of report of Survey Knowing Pleader Commissioner. They also produced Ext.-A, Ext.-B, B/1 and Ext.-C to C/2 which are the prescriptions, report of the Pleader Commissioner, map and khatiyani respectively. Learned Trial Court, on the strength of evidence adduced by the prosecution, held the appellants guilty and sentenced them in the manner noted above.

5. We have heard Mr. Surendra Singh, Senior Advocate and Mr. Akhileshwar Prasad Singh, Senior Advocate in support of Cr. Appeal (DB) No. 989 of 2013, Mr. Amit Sharma in support of Cr. Appeal (DB) Nos. 933 of 2013 and 1011 of 2013, Mr. Ajay Kumar Thakur in support of Cr. Appeal (DB) No. 892 of 2013, as also Mr. Vikramdeo Singh, Counsel for the informant and Mr. Satya Narayan Prasad, APP for the State.

6. Mr. Surendra Singh, while criticizing the impugned judgment of the Trial Court, has submitted that there are sharp contradictions in the evidence led by the prosecution. The witnesses



produced as eye witnesses are highly interested. The ocular evidence suffers from inner contradictions besides being partisan. There is a concerted effort of the eye witnesses to modulate their evidence in Court to align their version with the findings of the autopsy surgeon. On going through between the lines of their evidence, it would appear that actually none of them had witnessed the occurrence. P.Ws.-7 and 9 produced by the prosecution give full credence to the defence put up by A/1 to A/3 that they were not present at Sheikhpura on the relevant date and time of occurrence. These two witnesses have not been declared hostile by the prosecution, their evidence should not be sidelined. Even without adverting to the evidence adduced by the defence, their claim of *alibi* stand proved through their evidence. In the F.I.R., the informant has said about assault on the victim by as many as 10 accuseds at the place close to culvert whereas in course of evidence, many of the witnesses have stated about two places of occurrence when they claimed that upon receiving assault at the hands of the A/1 to A/3, the other 07 accused persons appeared and took the victim to the river side where he was assaulted with knife. The objective finding of the I.O. also does not support the prosecution case as projected by the prosecution as no blood stain was found by him in course of inspection of the place of occurrence. On the basis of the evidence of these highly interested witnesses, the conviction of the appellants would not be sustained. The reason behind the false



implication is that earlier A/1 had deposed against the informant and other witnesses of the case.

7. Mr. Amit Sharma, who has appeared in two cognate appeals, while adopting the submissions advanced by Mr. Singh, has added that the animosity being the reason for the occurrence would not hold good as it was A/7 who had lodged the case against the informant, the victim and P.W.-1 in which, on trial, they were convicted. He next submits that the allegation of having caused injury by knife, in all probability, ought to have caused penetrating wound and the blood oozed out. The doctor did not find any such injury on the person of the deceased having blood stains. Except one injury on the frontal part of the head, all other injuries sustained by the deceased were superficial/simple in nature. Referring to the prosecution evidence, he has also supported the contention of Mr. Singh that both parties suffer from groupism and factionalism calling for a deeper scrutiny of their evidence by Court. In course of trial, the prosecution has developed the case to align it with the medical evidence. Such improvement, in the setting of facts, should be considered as material contradictions and not a minor discrepancy. After placing the evidence of the ocular witness, it has been submitted that they had not actually seen the occurrence as the informant himself has stated that after the assault inflicted on the victim, the accused also chased him whereafter he ran away from the place of occurrence and raised



cry/alarm for about 10 minutes which attracted the other witnesses.

8. Mr. Thakur, in his turn, also severely criticized the findings recorded by the learned Trial Court. He would submit that it is a case where the C.D. statement of some of the P.Ws. were never recorded by the I.O. They have, thus, stated for the first time about the prosecution case in Court. In particular, he drew our attention to the findings recorded by the doctor (P.W.-11) as also his evidence in order to submit that the same does not support the prosecution case and shifts the time of occurrence to early morning and not at 8.30 or 9 p.m. as stated by the prosecution. Lastly, he would submit that even if the evidence adduced by the prosecution, on scrutiny, is accepted by the Court, the conviction of the appellants under Section 302 IPC would not be maintainable.

9. Mr. Vikram Deo Singh appearing for the informant and Mr. S.N. Prasad, APP for the State, on the other hand, supported the impugned judgment. It is urged that the evidence of the D.Ws. do not prove the alibi of A/1 to A/3. In this connection, they drew our attention to para 32 of the judgment. It is further submitted that almost all P.Ws. were immediately examined by the I.O. who recorded their C.D. statement. According to the prosecution, the informant along with his brother left home in the morning to go to Barbigha. As soon as they reached near the culvert near *tatti* bridge, A/1 to A/3, who were hiding themselves under the culvert, appeared and assaulted the



victim with the iron rod with which they were armed. In the fardbeyan, the informant alleged that the assault was made by iron rod. In course of deposition, it is stated that the iron rod had sharp edges. The other set of accuseds thereafter appeared, armed with knives, picked up the injureds and took to nearby river side where he was assaulted with knife by all of them. It has been argued that the informant has made improvement in the prosecution case in Court as the doctor (P.W.-11) found incised injury on the right side of frontal bone with fracture. Another injury over left eye brow was also found incised. The rest of the injuries on the person of the deceased were also incised wounds.

9A. As much emphasis has been placed on the aforesaid findings of the doctor in order to submit that the same does not support the prosecution case, we propose to first consider this aspect of the matter. The injury was sustained on the frontal part of the skull. In **(2004) 7 SCC 408 Dashrath Singh vs. The State of U.P.**, the Hon'ble Apex Court noticed Modi's Medical Jurisprudence & Toxicology wherein it has been explained (at page P.342) that occasionally, an injury caused by blunt weapon or by a fall, the skin splits and may look like incised wounds when inflicted on tense structures covering the bones, such as scalp, eyebrow, iliac crest, skin, perineum etc. The report further clarifies at P.404 that scalp wound by a blunt weapon may resemble an incised wound. Placing reliance on the above, the Hon'ble Apex Court negated the submission that the



injuries found on the occipital region would not have been caused by a *lathi* or stick. Precisely, similar is the case here. We, therefore, do not find much substance in the said submission. The doctor (P.W.-11) has stated that the injuries found on the dead body was caused by sharp cutting weapon. However, in paragraph 2, he has stated that these injuries could not have been caused by the hard blunt substance. We do not find from his evidence that the opinion expressed by him was based on scientific analysis of the injuries. The Courts have consistently negated such submission in view of the observations made on this point by the Modi's Medical Jurisprudence & Toxicology. To further strengthen our view on this point, reliance is placed on paragraphs 14 and 15 of the case of *Anil Vs. State of Maharasta (2014) 4 SCC 69*.

10. The contention of the appellants is that the relevant evidence adduced by the prosecution indicates factionalism/groupism between the prosecution and the defence. Our attention in this regard has been drawn to the evidence of P.W.-1 at paragraph 4, P.W.-4 Shankar Yadav at paragraph 4, the informant (P.W.-5) at paragraph-3 and 16. It has been urged that in the aforesaid background, the testimony of the eye witnesses would require deeper scrutiny. It has been urged on behalf of the appellants that the Court should keep in mind that the prosecution case of assault by three accuseds on the victim by iron rod and thereafter by all accuseds by knife near the



river bed side but only 07 injuries were found out of which only one was grievous injury. The aforesaid objective findings of the doctor shake the prosecution case. Before we consider those criticism(s), it is apt to briefly notice the relevant evidence produced by the prosecution. P.W.-5 has stated that on the relevant date, he, along with the deceased, had left the home in the morning without taking food. As soon as they reached near the culvert, A/1 to A/3 appeared, armed with sharpen iron rod, whereafter A/1 assaulted the deceased on his forehead whereas A/2 assaulted on his left shoulder and A/3 assaulted over his left eye brow. The victim fell on the ground whereafter the rest of the appellants caught hold of him and dragged him to the river bed side where he was assaulted by knife. What we find from his examination-in-chief that the allegation has been embellished. He has imputed some more allegation on A/1 to A/3 that they were catching hold of the victim when the victim was assaulted by the other seven accuseds. In paragraph 7, he has stated that when he first saw the victim, he was falling flat on the ground having received 7 or 8 injuries. The assault continued for 5-6 minutes. Seeing the assault, he fled away from the place of occurrence and started raising cry and raised cry for 10 minutes which attracted the witnesses and the P.Ws. arrived. Our attention has been drawn to the relevant omission in his statement made before the I.O. where material aspect of the prosecution case was not disclosed by him.



11. We would now examine the testimony of P.W.-1, who is own uncle of the informant and a witness to the recording of the F.I.R. Paragraphs 4 and 5 of his depositions spells out the *inter se* relation between the informant and witnesses as also provides the backdrop of inner disputes between the parties. One of the accuseds namely Surendra Yadav (A/10) had filed a case against him, the informant and the deceased in which they were convicted. In this case A/8 had deposed against them (P.W.-1 para 5). The said case is pending in appeal before the Appellate Court. He himself in paragraph 6 has stated that upon hearing the alarm raised by the informant, he reached the place of occurrence. We have already noticed the sequence of events narrated by the informant. P.W.-4 is the nephew of P.W.-1 Baleshwar Yadav. If we contrast his evidence at paragraph 11 with the testimony of P.W.-2 at paragraph 6, we find a sharp contradiction. P.W.-3 at paragraph 6 has stated that he reached the place of occurrence but did not make effort to intervene in the assault whereas P.W.-4 in paragraph 11 has categorically stated that he along with other P.Ws. reached at the place of occurrence including P.W.-3 and Krishna Yadav (not examined), Haro Yadav (P.W.-5), Dinesh Yadav (P.W.-3) and Baleshwar Yadav (P.W.-1) and had intervened when the assault was being perpetrated on the deceased. Almost all the prosecution witnesses have been suggested of deposing falsely in the case on account of previous animosity which they, however, have



denied. P.W.-5 Haro Yadav has sharply contradicted P.W.-4. He has candidly stated that he had not assembled at the place of occurrence and had actually witnessed the occurrence from a distance. He, too, has stated that he never tried to come to rescue of the informant and the victim. We have already seen from the evidence of P.W.-4 (at paragraph 11) that this P.W. was also stated as one amongst few witnesses who had tried to intervene and pacify the matter. The P.W.-4 has gone to the extent of asserting that he was the first who reached the place of occurrence. If he was the first then his further statement (para 11 at page 52 of the brief) is that when he reached the place of occurrence, he saw the victim lying on the ground in an injured condition. We also find a material difference in the evidence of the prosecution. P.Ws.-1, 4, 5 and 6 state about two places of occurrence; at one place, the victim was assaulted by A/1 to A/3. Thereafter, emergence of the rest of the 07 appellants and dragging or lifting the victim to the river bed side and then assault by knife by all. P.W.-3 has a different story to tell. According to his examination-in-chief, all the 10 accused persons were hiding beneath the culvert and appeared together and assaulted. He does not say about subsequent emergence of the 07 appellants, lifting of the victim by them to the river bed side and then assault by knife by them. We may, at this stage, highlight that the case of the informant in the fardbeyan is also that the victim was assaulted at one place firstly by A/1 to A/3 and thereafter by rest



of the appellants by knife on the same place. We would also note here that P.Ws.-1, 3 and 6 had not disclosed in their C.D. statement before the I.O. (P.W.-12) about the weapons with which the accused were armed and assaulted. If that be the case then assignment of weapons to accuseds by prosecution witness is apparently an improvement in the prosecution case in the light of the objective finding of the doctor (P.W.-11).

12. Having narrated the basic contradictions in the evidence of the prosecution, it is noticed that they are related inter se and form a faction or group. In the case of *Budhwa vs. State of M.P. (AIR 1991 SC 4)* on which reliance is placed by the appellants, it has been held that it is an accepted proposition that in the case of group rivalries and animosities, there is general tendency to rope in as many as persons as possible having participated in the assault. The Courts have, therefore, to be very careful in appraising their evidence. If upon a close scrutiny of the evidence, a reasonable doubt arises with regard to participation of any of those who have been roped in, the Court would be obliged to give benefit of doubt.

13. We turn again to the objective finding of the doctor (P.W.-11) which assumes significance. The informant has candidly stated that in the morning, he and the deceased left home without taking any food. It was about 8.30 a.m. in the morning. The time of occurrence is around 9 a.m. The autopsy surgeon found semi-digested



food in the stomach of the victim. On analyzing his findings, he has further stated that the deceased might have been done to death within 36 hours. He held the post mortem on the following day at 8.20 a.m. If any credence is given to his objective finding then the time of occurrence definitely shifts atleast by 4-5 hours prior to the time of occurrence as suggested by the prosecution which also fits in his finding that the semi-digested food was found in his abdomen. The doctor has further testified that injury found on the person of the deceased caused by sharp cutting/penetrating weapon shall have stains of blood unless they are washed. His objective finding(s) is that the injuries found on his person had no blood stains or clotting. He did not find the wounds having been given first aid. Quite contrary, P.W.-6 (informant) in his examination-in-chief stated that first aid/bandage was given to the wounds at the clinic of Dr. Puroshottam before taking the victim to Sheikhpura Government Hospital where in course of treatment, he died. On an overall conspectus of the evidence of P.Ws., it is brightly surfaced that P.W.-1 being the uncle of the informant had direct animosity with many of the accuseds. He is also a witness of recording of the fardbeyan. In this context, it is seen from the evidence of the informant at para 10 that the I.O. interrogated him (P.W.-1) first and recorded his statement whereon signature of P.W.-1 was first taken and thereafter the informant, too, affixed his L.T.I.. P.W.-1, therefore, was the true mentor of the fardbeyan. He was guiding the



prosecution case since its inception.

14. There is another relevant aspect which creates doubt in our mind. If the prosecution case is accepted, the victim was first assaulted by iron rod by A/1 to A/3 and thereafter by all the 10 accuseds with knife. The doctor found only 07 injuries. All of them were simple in nature except one caused on the frontal bone. If all the ten accuseds had assaulted, as the prosecution goes, then atleast 10 injuries must be present on the person of the victim. In the simplest words, it can be said that atleast 02 of them had not touched the body of the deceased. This creates a doubt on the prosecution case.

15. P.Ws.-1, 3, 4, 5 and 6 have modulated their evidence at the trial. In the case of *Badri vs. State of Rajasthan* [A.I.R. 1976 SC 560] at paragraph 18, the Hon'ble Apex Court, considering the facts which are akin to the present case, held that if the informant or the witnesses are found modulating his/their evidence, the Court should discredit their evidence. In the case at hand, as we have already noticed, the prosecution evidence suffers from vital omissions which are vital contradictions. Many relevant aspects of the prosecution case were, in fact, not stated by these P.Ws. before the I.O. The objective finding of the I.O. is that no blood stain mark was found either at the first place of occurrence or the second place of occurrence. If the victim had suffered injuries of the kind as found by the doctor, non-presence of the blood stain marks at any of the two places of



occurrence would throw a dense cloud on the prosecution case, particularly, when many of the witnesses have stated about dropping of blood at the place of occurrence.

16. We have, thus, several reasons, as discussed above, to doubt the prosecution case as presented at the trial through P.Ws. 1 to 6. At the cost of repetition, we would again note here that if the evidence of the informant (P.W.-6) is to be believed then he had fled away from the place of occurrence on seeing that the accused attempted to assault him and raised alarm for about 10 minutes which attracted the witnesses. According to him, the occurrence was committed within 5-6 minutes. Obviously, when the witnesses arrived, the assault was complete. Many eye witnesses have claimed that when they reached the place of occurrence, they could see the victim lying injured on the ground. The doctor (P.W.-11) has different story to narrate. He found semi-digested food in the stomach. The informant has stated that both of them (he himself and the victim) had left home without taking food. The estimated time of death as opined by the doctor does not fit in the prosecution case.

17. Apart from what discussed above, there is yet another circumstance which throw dust on the prosecution case instead of galvanizing the guilt. It has been pointed out to us from para 12 of the deposition of the I.O. (P.W.-12) that a joint C.D. statement of P.W.-1 and Krishna Yadav (not examined) was recorded by him on



05.09.2005 as they had earlier not turned up before him. It has been urged that there is no such concept under law of recording joint C.D. statement. In para 12, the I.O. has stated about the omissions in the statement of P.W.-1 which although minor but in the given facts of the case add to the series of deficiencies in the prosecution case. To narrate few more in the evidence in Court, P.W.-9 has stated about the non-presence of A/1 and A/2 at the place of occurrence supporting their plea of alibi. The prosecution relies on his evidence as he was not declared hostile. All these facts distinctly appearing from the record go to prove that the assault on the victim was not seen by the informant or the prosecution witnesses. The occurrence was committed at least several hours before the time as suggested by the prosecution. The hostility and factionalism between parties further create a doubt on the prosecution case. All the appellants are said to have assaulted the victim with iron rod and knife whereas the doctor found only 07 or 08 injuries. Taking into account the aforesaid facts, in our view, the prosecution has failed to prove its case beyond shadow of reasonable doubts. The appellants are entitled to benefit of doubt.

18. Resultantly, the present set of appeals is allowed. The judgment of conviction and order of sentence dated 30.08.2013 passed by learned Additional Sessions Judge, Sheikhpura in S.T. No. 659 of 2009 (arising out of Sheikhpura P.S. Case No. 237 of 2005), is



set aside. The appellants are acquitted of the charges and are directed to be set at liberty unless wanted in any other case. A/9 Dani Yadav is on bail. He is discharged from the liabilities of bail bonds.

(Kishore Kumar Mandal, J)

Sanjay Kumar,J : I agree.

(Sanjay Kumar, J)

Pankaj/-

AFR/NAFR	NAFR
CAV DATE	07.04.2017
Uploading Date	24.04.2017
Transmission Date	24.04.2017

