

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.973 of 2012

Arising out of PS.Case No. -14 Year- 2010 Thana -Singheshwar District- Madhepura

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Lal Yadav S/o Late Mahanand Yadav, resident of Village-Mazarahat, P.S.
Singheshwar, District Madhepura.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

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Criminal Appeal (DB) No. 1035 of 2012

Arising Out of PS.Case No. -14 Year- 2010 Thana –Singheshwar District- Madhepura

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Ashok Yadav, son of Ramautar Yadav, resident of village-Lalapatti, Police Station-
Singheshwar, District-Madhepura

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

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Criminal Appeal (DB) No. 988 of 2012

Arising Out of PS.Case No. -14 Year- 2010 Thana -null District- Madhepura

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Birendra Yadav, son of Mani Lal Yadav, resident of village-Gahumani, Police
Station-Singheshwar, District-Madhepura

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

(In CR. APP (DB) No.973 of 2012)

For the Appellant/s : Mr. Shekhar Kumar Singh, Advocate
Mr. P.K. Jha, Advocate
Mr. R.S. Mohan, Advocate
For the Respondent/s : Mr. Ajay Mishra (APP)

(In CR. APP (DB) No.1035 of 2012)

For the Appellant/s : Mr. Vishwanath Pd. Singh, Sr. Advocate
Mr. Bhubneshwar Prasad, Advocate
For the Respondent/s : Mr. Shivesh Chandra Mishra (APP)

(In CR. APP (DB) No.988 of 2012)

For the Appellant/s : Mr. Vikramdeo Singh, Advocate
Mr. Amarnath Jha, Advocate



For the Respondent/s : Mr. (APP)

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)
Date: 19-12-2017

The present appeals have been filed under section 374(2) read with section 389(1) of the Code of Criminal Procedure, 1973 against judgment of conviction and sentence dated 30th August, 2012 and 13th September, 2012 respectively passed in Sessions Trial No. 95 of 2010 by the learned Additional District and Sessions Judge, Ad hoc-III, Madhepura, arising out of Singheshwar P.S. Case No. 14 of 2010.

2. Since the aforesaid three appeals arising out of the same Sessions Trial No. 95 of 2010 as well as out of the common impugned judgment of conviction and sentence dated 30th August, 2012 and 13th September, 2012 respectively, the same have been heard together and are being disposed off by the present common judgment.

3. The appellant of Criminal Appeal (DB) No. 988 of 2012 i.e. Birendra Yadav has been held guilty for the offences punishable under section 302 of the Indian Penal Code and section 27 of the Arms Act and sentenced to undergo imprisonment for life and a fine of Rs. 10,000/- for the charge under section 302 IPC and in default of payment of the said fine, the said appellant has been directed to undergo further rigorous imprisonment for six months. He has been further sentenced to under go three years rigorous imprisonment for the charge under section 27 of the Arms Act. The other two appellants i.e. Lal Yadav of Criminal Appeal (DB) No. 973 of 2012 and Ashok Yadav of Criminal Appeal (DB) No. 1035 of 2012, have been held guilty for the offences



punishable under sections 302/34 of the Indian Penal Code and sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000/- and in default thereof they have been directed to undergo further rigorous imprisonment for three months.

4. The short facts of the case are that on the basis of the fardbeyan of the informant namely Rajesh Kumar recorded by Sub-Inspector of Police, C.D. Rajak of Singheshwar Police Station on 02nd March, 2010 at 11:30 P.M. at Sadar Hospital, Madhepura, Singheshwar P.S. Case No. 14 of 2010 was registered under section 302/34 of the Indian Penal Code and section 27 of the Arms Act against all the aforementioned appellants. The case of the informant namely Rajesh Kumar is that on 02nd March 2010 at about 4:00 P.M. in the day time he had gone to Singheshwar along with his brother Pramod Kumar Yadav for purchasing domestic articles and medicine. At about 8 P.M. in the night while the informant and his brother, after purchasing domestic articles and medicines, and watching the fair were returning to their home on their bicycle and when they had reached near Singheshwar Durga Asthan (Mahabir Chowk) then they met Ashok Yadav (appellant in Criminal Appeal (DB) No. 1035 of 2012), Birendra Yadav (appellant in Criminal Appeal (DB) No. 988 of 2012) and Lal Yadav (appellant in Criminal Appeal (DB) No. 973 of 2012) who were seated on two motorcycles. The appellant Ashok Yadav had then stopped the said two brothers at Mahabir Chowk and told the brother of the informant namely Pramod Kumar as to whether he wants to take money or not and he further told him that he would take him by motorcycle to his home and give money and then he would drop him at his home. Thereafter, the deceased Pramod Yadav with a view to take his money amounting to a sum of Rs. 1,50,000/- sat on motorcycle with the appellant Ashok Yadav and thereafter



all the four persons went away. Subsequently the said persons started eating betel leaf at the betel leaf shop and the informant by his bicycle went ahead. When the informant reached Doma Chowk and was eating betel leaf there, all the three appellants and his brother reached there. After the informant had eaten betel leaf and was urinating, suddenly the appellant Ashok Yadav and Lal Yadav caught hold of his brother Pramod Yadav and the appellant Birendra Yadav took out a country made pistol from his waist and fired a gun shot at the deceased and warned the informant that if he came forward, he would also be shot. The informant has further stated that the said three appellants are having criminal background. According to the informant these people had taken a sum of Rs. 1,50,000/- from the deceased as loan and with the intention of grabbing the said money they took his brother deceitfully and with a view to kill him had shot him as well as injured him at a place which is 200 yards south of Doma Chowk whereafter the said three appellants ran away on their motorcycle. Thereafter, the informant had informed his family members at his home and also the police station at Singheshwar and then the villagers of nearby area had come there. Subsequently, the police had also arrived there and had taken the deceased on jeep to the Madhepura Sadar Hospital, where during the course of treatment the brother of the informant namely Pramod Kumar Yadav died at about 11:30 P.M. in the night. On the basis of the aforesaid fardbeyan of the informant namely Rajesh Kumar, a formal FIR was drawn at 1:00 A.M. on 03.03.2010 under sections 302/34 of the Indian Penal Code and section 27 of the Arms Act against the aforesaid three appellants.

5. The police had investigated the case and finding the case to be true had submitted the charge sheet on 30.05.2010 against the aforesaid three appellants under section 302/34 of the Indian panel Code and section 27 of the



Arms Act. After completion of supply of police papers the case was committed to the court of sessions on 03.07.2010 and the charges were framed on 03.08.2010 against all the appellants under section 302/34 of the Indian Penal Code and on 13.12.2010 against the appellant Birendra Yadav under section 27 of the Arms Act.

6. During the course of the trial the prosecution has produced 10 witnesses to prove its case while the defence has produced two defence witnesses.

7. The informant of this case is P.W. 6 namely Rajesh Kumar Yadav and he is also the brother of the deceased. P.W. 2 is Sanjay who is the brother of the informant as well as the deceased and has been examined by the prosecution as a hearsay witness. Similarly P.W. 4 Babita Devi who is the wife of the deceased has also been examined as a hearsay witness. P.W. 5 Ravindra Kumar Yadav, the brother of the deceased is also a hearsay witness. P.W. 3, Nand Kumar is the brother in law of P.W. 5 and P.W. 1 is Chandradeep Kumar. Dr. Vijay Prasad Modak has been examined as P.W. 7 and he had conducted the postmortem on the dead body of the deceased and prepared the postmortem report. P.W. 10 Amarkant Choubey is the first I.O. of the case and P.W. 9 Rajeshwar Singh is the second I.O. and he had filed the charge sheet while P.W. 8, Binod Prasad Yadav is the Dy. S.P. who had filed the supervision report. The defence witnesses are D.W. 1 i.e. Amrendra Kumar Yadav and D.W. 2 Sitaram Yadav.

8. The learned Sr. counsel Sri Vishwanath Pd. Singh, who has appeared for the appellant Ashok Yadav, has contended that the circumstances would show that the prosecution witnesses are not reliable and there is contradiction in the mode and manner of carrying the deceased to the hospital. Moreover, at the place of



occurrence nothing was found and no seizure list has been prepared. The doctor who had examined the injury of the deceased has not been examined and therefore the correct version of the incident has been purposely withheld. It has been further contended that P.W. 4 i.e. the wife of the deceased namely Babita Devi has stated in her evidence that the informant Rajesh Kumar Yadav was in the house and all her Bhaishurs had gone to the place of occurrence after hearing about the said incident, hence the informant could not have been an eye witness to the occurrence and he has deposed falsely as well as it is clear that no such incident as narrated by the informant had ever taken place. The learned counsel has further contended that there is material contradictions on the mode and manner of arrival of the police and the motive is also not probable. It has also been submitted that if the appellants had already planned to kill the deceased there was no need to bring the deceased to the betel leaf shop or to hold the hand of the deceased for the purposes of killing him and they could have killed the deceased at a lonely place. It is also contended that none of the independent witnesses have been examined although 30-35 persons had assembled at the place and all the witnesses examined by the prosecution are tutored and planted witnesses. Lastly, it is submitted that the I.O. did not find any mark of the alleged incident at the place of occurrence, neither the blood soaked cloth was seized nor any cartridge was found nor any seizure list was prepared, hence the place of occurrence is also doubtful. It is contended that the present case is a case of clean acquittal. The Ld. Counsels for the other two appellants have adopted the aforesaid submissions.

9. Mr. Ajay Mishra, learned Additional Public Prosecutor for the State has contended that the quality of evidence is important and not the quantity, hence the witnesses who have deposed on behalf of the prosecution are



liable to be relied upon since their evidence is consistent. It is further submitted that the evidence of the informant cannot be disbelieved merely on the basis of the evidence of P.W. 4 who is a pardanasin lady. In such view of the matter, there is no doubt that the allegations leveled against the appellants have been proved beyond pale of all reasonable doubts. Lastly, it is submitted that there is ample evidence on record to sustain the conviction of the appellants herein.

10. At this juncture it would be relevant to discuss the evidence led by the prosecution. P.W. 6, Rajesh Kumar Yadav, who is the informant of this case as well as the brother of the deceased has stated in his evidence that the occurrence dates back to 02.3.2010 at about 9:00 P.M. in the night when he was at the second pulia (small bridge) which is one pulia ahead of doma chowk and was returning to his home from Singheshwar. He has further stated that when he had reached at Mahabir Chowk along with his brother Pramod, all the three appellants were standing there, beside their motorcycle and the appellant Ashok Yadav stopped his brother Pramod Yadav and asked him as to whether he wanted to take his money and further told him to come along with him on his motorcycle to his house and he would give his money whereafter he would also drop him. The deceased Pramod had then given the cycle to P.W. 6 and then he went towards the East along with the appellants on their motorcycle. Ashok, Lal Yadav and the deceased Pramod were seated on one motorcycle and the appellant Birendra on another. According to the informant when he had moved ahead on his cycle he saw all the said four persons eating betel leaf at the betel leaf shop whereafter the informant had moved ahead and upon reaching Domashi Chowk he also started eating betel leaf. According to P.W. 6 he had then gone ahead for urinating and in the meantime, he saw that all the said four persons (three appellants and the deceased) had moved ahead while the



informant was at the first pulia ahead of Domashi Chowk. It is the statement of P.W. 6 that while he was about to move with his cycle he saw that appellant Ashok Yadav and Lal Yadav had caught Pramod Yadav (deceased) after getting down from the motorcycle and the appellant Birendra took out three not from his waist and fired gun shot at the deceased Pramod Yadav. Thereafter, Pramod Yadav started pleading that he does not want any money and he should not be killed but Pramod was given a gun shot blow and he became injured. The informant then started shouting whereupon the appellant Ashok said that he should also be shot at. Thereafter, all the three appellants on the said two motorcycles ran away towards Singheshwar. Upon hulla made by the informant and upon hearing the noise of gun shot many people came there. The informant is said to have told the mobile number of his house to some person present there and that person had informed the family members as well as had informed the police station. Thereafter, the family members also came there and the police also arrived. The police picked the injured Pramod and kept him in the jeep and thereafter Pramod was taken to Madhepura Sadar Hospital where he died during the course of treatment. While the deceased Pramod was being taken to the hospital, he was uttering on the way that due to money, the appellants have shot him. P.W. 6 has further stated that the deceased Pramod used to work at the Exchange situated at the house of the appellant Ashok Yadav and at that time the appellant Ashok Yadav had taken money from Pramod. The deceased had given his statement to the Dy. S.P. and told him that all the three appellants had inflicted gun shot injury on him for money. The Dy. S.P. had told the Daroga to call some official and record the statement of Pramod, however, in the meantime Pramod died. P.W. 6 had identified his signature on the fardbeyan and the same was marked as Exhibit-1. P.W. 6 had also identified the signature of his uncle



Chhote Lal Yadav on the fardbeyan and the same has been marked as Exhibit-1/1. The police officials had prepared the inquest report which was signed by P.W. 6 and his brother Sanjay and P.W. 6 has identified his signature as well as signature of Sanjay and the same has been marked as Exhibit-2 and 2/1. P.W. PW 6 has identified his signature on the protest petition and the same has been marked as Exhibit-3. P.W. 6 has also identified the signature of Shri Jawahar, Advocate on the protest petition and the same has been marked as Exhibit-3/1. In paragraph no. 13, P.W. 6 has clarified that in the fardbeyan the date was wrongly mentioned as 02.2.2010 instead of 02.3.2010. In paragraph no. 25 of his cross-examination P.W. 6 has stated that he and his brother Pramod had left the house at 4:00 P.M. in the evening for purchasing medicine and vegetables. In paragraph no. 28 of his cross-examination, P.W. 6 has stated that there were about 40-50 people at the Mahabir Chowk. In paragraph no. 29 of his cross-examination, P.W. 6 has stated that he did not meet any one in between Mahabir Chowk and Domashi Chowk despite the fact that many people were crossing him. In paragraph no. 30 of his cross-examination, P.W. 6 has stated that he had eaten betel leaf at a shop at Domashi Chowk, however, he cannot tell the name of the shop keeper, however, he took 10-15 minutes to eat betel leaf. In paragraph no. 31 of his cross-examination, P.W. 6 has stated that the place of occurrence is about 200 yards from the Domashi Chowk and the first pulia is at about 100 yards. In paragraph no. 32 of his cross-examination, P.W. 6 has stated that when he was at the first pulia, he had not heard the sound of gun fire and while he had moved ahead of first pulia on foot along with his cycle and was about to climb his cycle then he heard the sound of gun shot. In paragraph-33 of his cross-examination, P.W. 6 has stated that after he heard his brother shouting, he saw that his brother has been killed by gun shot whereafter he had put his



cycle beside the road. In paragraph no. 35 of his cross-examination P.W. 6 has stated that when he reached near his brother he found that his brother had fallen down and was writhing, whereafter, he held his brother and sat down and he was nervous till the police came. The police had come after 15-20 minutes and he and his family members as well as the police had given support to his brother and made him sit. In paragraph no. 38 of his cross-examination, P.W. 6 has stated that when he held his brother, his clothes had also become soaked with blood. In paragraph no. 39, P.W. 6 has stated that when his brother was made to sit on the jeep, then the blood was oozing from his body and the police official namely Choubey Jee had also seen the blood falling down. In paragraph no. 41 of his cross-examination, P.W. 6 has stated that he, Chandradeep, Ratandeep and Rabindra had sat in the jeep with Pramod. There were 15 persons present in the jeep and Pramod was taken to Madhepura hospital directly since his condition was serious and therefore they had not stopped at Singheshwar hospital. The Dy. S.P. was called over on mobile on the way. In paragraph no. 44 of his cross-examination, P.W. 6 has stated that after half an hour of reaching Madhepura hospital, Pramod had died during the course of his treatment. In paragraph no. 46 of his cross-examination, he has denied the knowledge as to whether Ashok was caught in the hospital or not. In paragraph no. 47 of his cross-examination, P.W. 6 has stated that at 3:00 A.M. in the morning he came to know that Ashok has been caught. In paragraph no. 72 of his cross-examination, P.W. 6 has stated that when his brother was being brought by Jeep to the hospital he had noticed that on account of his brother receiving gun shot, 3-4 injuries had taken place on his body and blood was oozing out. In paragraph no. 75 of his cross-examination, P.W. 6 has stated that prior to the said incident, he or his family members did not have any quarrel with the appellant Birendra and Lal. In paragraph no. 76 of his



cross-examination, P.W. 6 has stated that Pramod also did not have any quarrel with Birendra or Lal.

11. P.W. 2 is Sanjay Kumar who is the brother of the informant and the deceased and he has stated in his evidence that the occurrence dates back to 02.03.2010 at about 9:00 P.M. in the night at a time when he was returning from Madhepura to Singheshwar and he had reached Singheshwar at about 8:00 P.M. At Singheshwar he had purchased domestic articles and when he was going to his house at about 8:30 P.M. and was at some distance before the Domashi chowk, he heard gun shots sound and got startled. When P.W. 2 had gone ahead and reached near Domashi Chowk, he found that people were shouting that Pramod of Lala Patti has been shot. P.W. 2 had then seen that all the three appellants were going towards Singheshwar on their motorcycles and the appellant Ashok Yadav was saying that it is good that he has been killed since he wanted money. P.W. 2 had then moved ahead and gone near the brick kiln at the Gomani Road and reached near the pulia where he saw that Pramod had fallen down and Rajesh was holding him and was crying. Chandradeep and others were present there. Pramod was requesting to save him and was saying that he had told Ashok that he did not want money and he should be left, however, upon extortion by Ashok, appellant Birendra had fired gun shot on Pramod. In the meantime the family members of P.W. 2 and villagers had reached there. Thereafter, Pramod was brought to Madhepura hospital on the police vehicle where he was treated and on the way Pramod was saying that Ashok had fired a gun shot on him. In the hospital, Dy. S.P. and Daroga had also reached and the Dy. S.P. had also enquired from Pramod and Pramod had told him about the incident. However, during the course of treatment Pramod died at about 11:30 P.M. In paragraph no. 2 of his cross-examination, P.W. 2 has stated that he was



working in the Telephone Department since the year 2000 and used to go to his office at Madhepura from his village. In paragraph no. 11 of his cross-examination, P.W. 2 has stated that on the date of occurrence he had gone to Madhepura and he gets a slip for doing the work and on that day also he had got a slip. In paragraph no. 13 of his cross-examination, P.W. 2 has stated that he leaves his house 6-7-8 A.M. in the morning for his office and from his office he returns at 7-8 P.M. in the evening. In paragraph no. 17 of his cross-examination, P.W. 2 has stated that he did not meet any known person in between Madhepura and Singheshwar, however, upon reaching Singheshwar he met many known people but he does not remember their names. In paragraph no. 20 of his cross-examination, he has stated that he had seen many people in between Singheshwar and Domashi Chowk and he had also seen the appellants going together. In paragraph no. 21 of his cross-examination, P.W. 2 has submitted that he had seen Pramod in an injured condition at a distance of 200 yards towards the south of Domashi Chowk. In paragraph no. 22 of his cross-examination, P.W. 2 has stated that the night was lit and at Domashi there are 3-4 shops. In paragraph no. 24 of his cross-examination, P.W. 2 has stated that he had seen three appellants going quickly on their motorcycle from Domashi Chowk towards the road going towards Singheshwar which is at a distance of 50 meters towards the west. In paragraph no. 25 of his cross-examination, P.W. 2 has stated that the people who were shouting had not followed the accused persons. In paragraph no. 22 (repeated), of his cross-examination, he has stated that he had seen 30-35 people present at the place of occurrence. In paragraph no. 24 of his cross-examination, he has stated that when he caught his brother, his brother hanged on his shoulder and his clothes also got soaked with blood. Blood had also fallen on the ground and the blood had fallen in an area of about



two hands. In paragraph no. 28 of his cross-examination, P.W. 2 has stated that while he along with his injured brother and others were 10 steps before the Domashi Chowk, the Police had arrived by Jeep. In paragraph no. 29 of his cross-examination, he has stated that they had told the Police that Pramod has been hit by gun shot and he should be taken to the hospital whereafter the Police had loaded Pramod on the Jeep and had taken him to the hospital. In paragraph no. 31 of his cross-examination, he has stated that the Police who had reached at the place of occurrence had made enquiries from Rajesh and Pramod during the course of travelling to the hospital. However, nothing was written. In paragraph no. 32 of his cross-examination, P.W. 2 has stated that the injured Pramod was not brought to Singheshwar and was taken directly to Madhepura hospital. In paragraph no. 34 of his cross-examination he has stated that he had seen Ashok Yadav at the Madhepura hospital and Ashok and Lal were not getting themselves treated at the hospital. In paragraph no. 35 of his cross-examination, he has stated that Rajesh had also seen Ashok at the hospital and his motorcycle was standing beside the hospital. In paragraph no. 39 of his cross-examination, P.W. 2 has stated that he had stated in his statement before the Police that his brother Pramod was working in the house of Ashok Yadav as a telephone operator. In paragraph no. 60 of his cross-examination, P.W. 2 has submitted that he had not seen anyone shooting at Pramod. In paragraph no. 62 of his cross-examination, P.W. 2 has stated that he had seen 3-4 injuries on the body of his brother Pramod. In paragraph no. 63 of his cross-examination, P.W. 2 has stated that he had seen that Pramod was shot by bullet in his stomach on the right side. In paragraph no. 65 of his cross-examination, P.W. 2 has stated that the shirt, baniyan and sweater of Pramod was not taken by the Police and the same has a hole of bullet as well as the area around the hole in the shirt was stained



with blood. In paragraph no. 71 of his cross-examination, P.W. 2 has stated that he had not given his clothes to the Police which had got blood stained when he was lifting his brother.

12. P.W. 3 is Nand Kumar and he has stated in his evidence that the occurrence dates back to 2-3-2010 while he was present in his village. At about 2-3 P.M. in the afternoon he had gone to watch fair at Singheshwar and had left on foot. After watching the fair at about 8:00 P.M. in the night, he started from there to go to his sister Reeta Devi's house situated at Lala Patti. When P.W. 3 reached at Domashi Chowk it was about 9:00 P.M. in the night and then he heard sound of gun shot whereby he got startled. He was told by the villagers not to go towards the said place since firing is taking place, however, he did not listen and went ahead and on the way he saw that all the appellants on the motorcycle were going through the Domashi Chowk and were nervous, which he had seen by lighting his torch and in the moon lit night. P.W. 3 had then moved ahead and reached at the Pulia when he saw that Pramod was lying in an injured condition and Rajesh was taking care of him. P.W. 3 also tried to take care of Pramod and in the meantime his family members came there and arrangements were being made to take Pramod to the hospital. Pramod was saying that all the three appellants had hit him by gun shot with the motive of grabbing his money. In the meantime, many people came there and for taking Pramod to Hospital, motorcycle was arranged. However, by that time Police had came there on its vehicle and Pramod was taken to the hospital. On the way Pramod had told that all the three appellants had shot him. P.W. 3 has further stated that the Dy. S.P., Madhepura had come to the hospital and Pramod had also told him about the incident. The death of Pramod took place at about 11:00 P.M. in the night. In paragraph no. 19 of his cross-examination, P.W. 3 has stated that he had not seen



the murder by his own eyes. In paragraph no. 21 of his cross-examination, P.W. 3 has stated that the name of his brother-in-law is Ravindra Kumar and Pramod is own brother of brother-in-law. In paragraph no. 74 of his cross-examination, P.W. 3 has stated that Pramod was working on a temporary basis in the Telephone Exchange of B.S.N.L. at Lala Patti branch.

13. P.W. 4 is Babita Devi, the wife of the deceased and she has stated in her evidence that the occurrence is of about one year back and the day was Tuesday when she was at her in-law's place at Lala Patti. The appellant Ashok Yadav had rang her husband at 11:00 A.M. in the day time and told Pramod to come at his place for taking money whereafter her husband had gone to Singheshwar. In the night at about 8-9 P.M. information was received that her husband Pramod has been shot by gun fire and the appellant Ashok had held her husband and the appellants Lal and Birendra had fired gun shot on her husband. P.W. 4 also came to know that her husband was shot at the bridge near Domashi Chowk and immediately her husband's elder brother, her father-in-law and some of the villagers ran and went to the place of occurrence whereafter she came to know that her husband had been taken to Madhepura Sadar Hospital and then her younger brother came and took her to Madhepura Hospital where she saw her husband lying in an injured condition and drip was being administered to him. She heard her husband saying that with the motive of grabbing Rs. 1,50,000/-, the appellants had shot him. She has further stated that her husband died at about 11:30 P.M. in the night at the hospital during the course of treatment. In paragraph no. 11 of her cross-examination, P.W. 4 has stated that after her husband received a call on his mobile he had gone to Singheshwar after informing her and other family members. In paragraph-19 of her cross-examination, she stated that when her husband had left for Singheshwar, at that



time her husband's brother Rajesh, father-in-law Tarani, mother-in-law and three gotanis (sister-in-laws), apart from her, were present in the house. In paragraph no. 20 of her cross-examination, she has stated that one of her husband's brother namely Rabindra was a teacher posted at Jandaha High School at the time of occurrence. In paragraph no. 21 of her cross-examination, she has stated that Rabindra stays at Jandaha and does the work of teacher. In paragraph-25 of her cross-examination, she has stated that her husband was shot in the rib-cage which she had seen in the hospital. In paragraph-29 of her cross-examination, she states that a sum of Rs. 1,50,000/- of her husband Pramod was lying with the appellant Ashok and her husband used to work in the private telephone tower exchange of Ashok since six years and her husband had given money to Ashok by way of loan. In paragraph no. 43 of her cross-examination, she states that she had not stated before the Police that upon receiving information, her brother's elder brother, father-in-law and others had gone there running. In paragraph no. 44 of her cross-examination, she has stated that after receiving information all the brothers of her husband and her father-in-law had hurriedly gone to the place of occurrence.

14. P.W. 5 is Rabindra Kumar Yadav who is the brother of the informant and the deceased and he has stated in his evidence that the occurrence dates back to 02.03.2010 at about 9:00 P.M. in the night when he was at his house at Lala Patti. At that time he received information on telephone that near Domashi Chowk, Pramod has been shot by gun fire, whereafter he immediately took the motorcycle from his room and went to the place of occurrence and after reaching at the place of occurrence which is 200 yards south to the Domashi Chowk at the Pulia, he saw that Pramod was injured and drenched with blood and Rajesh, Chandradeep, Nand Kumar and Sanjay were taking care of injured



Pramod. P.W. 5 has stated that when Pramod saw him he told him to save him since he has been shot. Pramod also told P.W. 5 that the appellant Ashok and Lal had caught his hand and the appellant Birendra had shot him. Thereafter, attempt was made to take the injured Pramod on a motorcycle to the hospital. However, he could not be taken on the motorcycle to the hospital and in the meantime the Police came by Jeep whereafter Pramod was loaded on the Jeep and taken to Singheshwar Hospital, however, since his condition was serious, the Police official said that it would be better to go to Madhepura Hospital whereafter Pramod was treated at Madhepura Hospital. During the course of the treatment the Dy. S.P. came there and Pramod was telling the Dy. S.P. that his money was being kept by Ashok and with the intention of not giving the said money, the appellants herein have shot him. At about 11:00 P.M. in the night Pramod died during the course of treatment. In paragraph no. 9 of his cross-examination, P.W. 5 has stated that he stays at jandaha and does the work of teaching which he is doing till date. In paragraph no. 19 of his cross-examination, he had stated that he heard hulla about Pramod being shot in the village and had also received message over the telephone. In paragraph no. 21 of his cross-examination P.W. 5 has stated that he had not enquire as to who had rang and informed him over the telephone about the incident. In paragraph no. 22 of his cross-examination, he has stated that he had received information at his house, his mother, his wife, two sister-in-laws including wife of Pramod were present. At that time his brothers were not at home. In paragraph no. 26 of his cross-examination, P.W. 5 had stated that Akhilesh had also come along with him on his motorcycle at the place of occurrence. In paragraph no. 55 of his cross-examination, P.W. 5 had stated that at the time when Pramod had given his statement to the Dy. S.P., the Dy. S.P. had not taken the signature of Pramod on any paper. In paragraph no.



86 of his cross-examination, he has said that he and his family members do not have any enmity with any person of Gahuni and Majar Hatt villages. In paragraph no. 90 of his cross-examination, he states that he is a teacher at Jandaha since the past one year and Jandaha is situated in the eastern-southern corner towards his village.

15. P.W. 1 is Chandradeep Kumar and he has stated in his deposition that the occurrence dates back to ten months when he was going to his sister's place for delivering message. He had reached Singheshwar at about 5:30 P.M. and after seeing the fair while he was going to his sister place at about 8:30 P.M. at Lala Patti and had reached near Domashi Chowk then he heard the sound of gun shot firing and when he proceeded further he saw people shouting and running and saying that Pramod of Lala Patti has been shot. P.W. 1 has stated that he was also carrying a torch and when he had moved 100 meters forward, he saw two motorcycles coming and on one motorcycle two people were seated and the other motorcycle was being ridden by one person. P.W. 1 had then seen the three appellants on the motorcycle and the appellants Birendra and Ashok Yadav were holding three not in their hands when P.W. 1 had proceeded further he saw that Pramod had fallen down on the ground and he was drenched with blood and was shouting as well as saying that he has been hit by gun shot and was telling them that all the three appellants have shot him with the motive of grabbing money. P.W. 1 had seen brother of Pramod namely Rajesh who is his brother-in-law also. When arrangements were being made to take Pramod to the hospital, the Police from the Singheshwar Police Station had arrived there, whereafter the injured Pramod was taken to the hospital on the Jeep. On the jeep, Rabindra, Sanjay and Nand Kumar as well as 5-7 police personnel were seated. At the hospital Pramod had given his statement to the Dy. S.P. and had stated that the



appellants had shot him. The appellant Ashok was caught by Dy. S.P. at the hospital. Pramod died at about 11:30 P.M. in the night during the course of treatment. In paragraph no. 8 of his cross-examination, P.W. 1 has stated that he had seen Pramod at the betel leaf shop in the Singheshwar market and Pramod was empty handed. All the three appellants were also present at the betel leaf shop and Pramod was talking to them. In paragraph no. 9 of his cross-examination, P.W. 1 has stated that Pramod did not call him to eat betel leaf, however, he told him to go ahead whereupon P.W. 1 had gone towards the Domashi Chowk and reached there after 45 minutes. In paragraph no. 12 of his cross-examination, he has stated that he had taken a turn towards the road going from Domashi Chowk to Lala Patti and his torch was lit while he was going on his cycle. In paragraph no. 15 of his cross-examination, P.W. 1 has stated that the place where Pramod had fallen down, there was a pulia. In paragraph no. 23 of his cross-examination, P.W. 1 stated that the police had not recorded the statement even after reaching Madhepura and he has not given his torch to the Police. In paragraph no. 32 of his cross-examination, he had stated that he had seen three not in the hands of appellants Birendra and Ashok.

16. P.W. 7 is doctor Vijay Prasad Modak who had conducted the autopsy on the dead body of the deceased Pramod and he has stated in his evidence that on 03.03.2010 he was posted as Sadar Hospital, Madhepura as the Medical Officer and at about 10:00 A.M. he had conducted the postmortem on the dead body of Pramod Kumar Yadav and he had found rigour mortis present on all the limbs. P.W. 7 held external examination of the dead body and found the following injuries:-

“Body-cool, calm, both eyes dark pupil dilated and fixed. Black hair on scalp. Bandaged wound was found in the abdomen. After opening of the



bandage a wound oval in shape $\frac{1}{2}$ " x $\frac{1}{2}$ " into abdomen deep inverted margin blackening around the wound on the back of abdomen 3" above left iliac crest bone and 2 $\frac{1}{2}$ " lateral to the left side of vertebral column-

Wound of entry

Lacerated wound $\frac{1}{2}$ " x 1" into abdominal deep inverted margin on the right iliac fossa - wound of exit.

Lacerated wound on the back of scalp $\frac{1}{2}$ " x $\frac{1}{2}$ " into muscle deep.

On dissection, P.W. 7 had found the following:-

- (a) Skull-bone, meninges and brain-N.A.D.
 - (b) Throx-lungs, prechea-NAD, Heart-NAD, all chamber empty.
 - (c) Abdomen-contains fill of blood and clot mixed with fickle madles.
 - (d) Multiple purported wound of No. 5 limph and limph on the loop of intestine.
 - (e) Purported wound on the ascending part of large intestine.
 - (f) Lacerated wound with hematoma in the mesentery of small intestine.
 - (g) Lacerated wound on the upper pole of right kidney. Spleen and liver-NAD and pale.
 - (h) Stomach contains few amount of partially digested food.
- Bladder-NAD

P.W. 7 had opined that the cause of death is due to massive hemorrhage and shock due to aforementioned injuries of internal organ of abdomen as a result of fire arm. The time elapsed since death from the time of conducting the postmortem was stated to be between 12 to 24 hours. The postmortem report was identified by P.W. 7 to be in his hand writing and he had identified his signature and the same was marked as Exhibit-4. P.W. 7 in his cross-examination had stated that he had found only one fire arm injury which had not caused any other injury in the abdomen.



17. P.W. 10 Amar Kant Choubey is the Investigating Officer of the case and he had stated that on 03.03.2010, he was In-Charge of Singheshwar Police Station and on that date the Sub-Inspector of Police namely C.D. Rajak, posted in his Police Station had recorded fardbeyan of the informant namely Rajesh Kumar Yadav. P.W. 10 has identified the fardbeyan and the writing therein and the same has been marked as Exhibit-1/2. P.W. 10 has further identified his endorsement on the fardbeyan regarding registering the case to be in his hand writing, which he recognizes and the same has been marked as Exhibit-1/3. It has been stated that P.W. 10 had taken over the burden of investigation on 03.03.2010 of Singheshwar P.S. Case No. 14 of 2010 whereafter he had gone in the night to inspect the place of occurrence, however, he could not inspect since it was night. Thereafter, P.W. 10 had deputed Choukidar and had contacted Rajesh for arresting the accused persons. P.W. 10 had also arrested the appellant Birendra Yadav after conducting the raid at village Gahmari and had arrested the appellant Ashok Yadav from the Sadar Hospital, Madhepura and brought the said two arrested accused persons to the Police Station. The accused Lal Babu was arrested from village Majrath. In paragraph no. 3, P.W. 10 has stated that at the hospital the inquest report of the deceased Pramod Yadav was prepared by C.D. Rajak along with a carbon copy and the original copy was deposited and the deceased was sent for postmortem examination. P.W. 10 has identified the inquest report which is in the writing of Shri C.D. Rajak and has identified the same whereafter it has been marked as Exhibit 2/2. In paragraph no. 4, P.W. 10 has stated that during the course of investigation he had inspected the place of occurrence which is on the second pulia which is after the first pulia which is half kilometer towards the southern side of the Domashi Chowk on the road going towards the southern side to the



village under village Patauri under Singheshwar Police Station. In paragraph no. 6, P.W. 10 has stated that on 02.03.2010 in the night at about 10:00 P.M. he was on patrol and it was fair time when he received information that some occurrence had taken place near Domashi Chowk whereafter he had proceeded to the said place on his Jeep along with the Police force for verification and on the way he saw 2-3 motorcycle coming and on one motorcycle informant Rajesh and one attendant were bringing the injured brother who stopped upon seeing the police Jeep and requested for going to the hospital by Jeep whereafter the injured, Rajesh who is the informant and others sat on the Jeep and came to the Sadar Hospital. It has been further stated that before reaching the hospital P.W. 10 had informed the Sadar Police Station, Madhepura as well as the senior officials. P.W. 10 has also stated that the injured was in an unconscious condition but after reaching the Hospital and becoming conscious he had said that Ashok Yadav had committed the incident and upon being asked he told that his one and half lakh rupees was with Ashok Yadav and with the intention of grabbing the said money Ashok Yadav had fraudulently, after making him drink liquor, had brought taken him and got him shot by Birendra Yadav where Lal Yadav was also present. In paragraph no. 7, P.W. 10 had stated that when the injured was telling these things then at that time S.D.P.O. was also there. In paragraph no. 8, he has stated that during the course of the investigation he had recorded the statement of witnesses namely Ram Briksha Mahto, Babita Kumari, Ram Kishun Yadav, Nand Kumar and Abhinandan. P.W. 10 has identified the supervision note received during the course of the investigation, which is typed and has been signed by the Dy. S.P. Binod Kumar and the same was marked as Exhibit-3 (with objection). In paragraph nos. 12 and 13 of his cross-examination, P.W. 10 has clarified that the date was wrongly written in the fardbeyan as



02.02.2010 and the same should have in fact been 02.03.2010. In paragraph no. 16 of his cross-examination, P.W. 10 had stated that he and another police official had taken the injured to the hospital where he reached at 11:15 P.M. In paragraph no. 17 of his cross examination, P.W. 10 had stated that after admitting the injured at the hospital he had gone alone for conducting raid along with his police force. In paragraph no. 20 of his cross-examination, he has stated that after arresting Birendra he did not inform his family members. In paragraph no. 21 of his cross-examination, P.W. 21 submitted that he did not know Birendra Yadav from before and he was recognized by the Chowkidar. In paragraph no. 23 of his cross-examination, P.W. 10 stated that during the course of investigation conducted by him, he did not receive the postmortem report of the deceased and he could not take the same on account of being busy with the law and order arrangements. In paragraph no. 24 of his cross-examination, P.W. 10 has stated that he did not find any mark of blood etc. on the body of the accused persons whom he had arrested. In paragraph no. 25 of his cross-examination, P.W. 10 has stated that he had reached the place of occurrence in the night but he could not inspect the place of occurrence since it was night. He has further stated that firstly he had conducted raid in the village of the accused Birendra and he was found sleeping in the veranda of his neighbor and upon coming to know about it he had gone there and arrested Birendra, however, he had not recorded the statement of the neighbor during the course of the investigation. In paragraph no. 35 of his cross-examination, P.W. 10 stated that all the witnesses whose statement has been recorded during the course of the investigation have mentioned the names of Birendra and Lal Yadav but they have not told about the name of their father. In paragraph no. 39 of his cross-examination, P.W. 10 had stated that no Test Identification Parade of Birenda or



Lal Yadav was got conducted in the presence of the witnesses since all the witnesses had mentioned about the names of these two accused persons. In paragraph no. 40 of his cross-examination, P.W. 10 has stated that the brother of the deceased had received information about the deceased being shot over the telephone, however, he has not mentioned the phone number in his case diary. In paragraph no. 41 of his cross-examination, P.W. 10 had stated that the Dy. S.P. in his supervision note, at direction no. 3, had written that print out be taken out of the mobile number by which the informant had informed the Police. In paragraph no. 45 of his cross-examination, P.W. 10 has stated that the fardbeyan was not recorded in his presence. In paragraph no. 46 of his cross-examination, P.W. 10 had stated that the signature of Dy. S.P. is not present on the fardbeyan. In paragraph no. 52 of his cross-examination, P.W. 10 has stated that in column no. 5 of the death inquest report, it has been stated that one wound was covered by bandage and it was present on the right side below the stomach, one was present on the back side of the head and there was a cut over the front portion above the waist. In paragraph no. 53 of his cross-examination, P.W. 10 has stated that he had not seized the blood soaked clothes which have been mentioned in the death inquest report. In paragraph no. 57 of his cross-examination, P.W. 10 has stated that in the night the injured was carried on the Jeep and at that time he was drenched with blood as well as while going to the hospital blood had flown. In paragraph no. 60 of his cross-examination, P.W. 10 has stated that Chandradeep in his statement made before him had not stated that on account of greed for grabbing money, Ashok, Lal and Birendra had shot Pramod, however, afterwards he said that Pramod was saying that with the intention of grabbing money Ashok through Birendra had got him shot. In paragraph no. 64 of his cross-examination, P.W. 10 has stated that the witness



Chandra Kumar had stated in his statement made before him that he was going towards his sister's house after watching theatre at Singheshwar. In paragraph no. 66 of his cross-examination, P.W. 10 has stated that the witness Nand Kumar had not stated in his statement made before him that on two motorcycle i.e. on Passion motorcycle, Ashok and Lal were going while on the second motorcycle Birendra was going. In paragraph no. 67 of his cross-examination, P.W. 10 has stated that the witness Nand Kumar has not stated in his statement before him that the injured Pramod was saying that with the intention of grabbing money, Birendra, Lal and Ashok had shot him. In paragraph no. 68 of his cross-examination, P.W. 10 had stated that the witness Pramod had not stated in his statement made before him that his one and half lakh was with Ashok. In paragraph no. 69 of his cross-examination, P.W. 10 states that the witness Babita Devi had not stated in her statement made before him that the occurrence had taken place at the bridge near Domashi Chowk. In paragraph no. 71 of his cross-examination, P.W. 10 has stated that the witness Rabindra, in his statement made before him though has said about seeing Pramod at the place of occurrence, however, he has not stated that Chandradeep and Nand Kumar were also looking after Pramod. In paragraph no. 74 of his cross-examination, P.W. 10 had stated that the witness Rabindra had stated in his statement about money being due but he has not stated in his statement that one and half lakh rupees was due with Ashok. In paragraph no. 79 of his cross-examination, P.W. 10 had stated that B.S.N.L. tower was situated in the village but he had not investigated the field.

18. P.W. 9 Rajeshwar Singh has stated in his evidence that on 27.05.2010 he was the Officer In-Charge of Singheshwar Police Station, Madhepura and had taken up of the investigation of Singheshwar Police Station Case No. 14 of 2010 from Sub-Inspector of Police, Amar Kant Choubey. During



the course of the investigation, he had obtained the postmortem report from the hospital and recorded the same in the case diary. P.W. 9 had also received the final progress report from the senior officer. After perusing the evidence, P.W. 9 had filed the charge sheet under sections 302/34 of the Indian Penal Code and section 27 of the Arms Act against all the three appellants herein, finding the occurrence to be true. In paragraph no. 4 of his cross-examination, P.W. 9 had stated that from perusal of the fardbeyan, it is clear that S.I. C.D. Rajak had recorded the fardbeyan and the date has been shown to be 02.02.2010. In paragraph no. 5 of his cross-examination, he has stated that on the foot of the fardbeyan Rajesh has put his signature and beneath it he has written the date as 02.02.2010.

19. P.W. 8 Binod Prasad Yadav has stated in his evidence that on 03.03.2010, he was posted as Dy. S.P., Madhepura and on that date one Pramod Yadav was shot by fire arm under the Singheshwar Police Station and he was taken to the hospital in an injured condition by the Police. P.W. 8 has further stated that he has reached the hospital and had seen that Pramod had received gun shot injury and thereafter he had become conscious and P.W. 8 had made enquiries from him. Pramod had told P.W. 8 that all the three appellants had got together and shot him by fire arm. After sometime Pramod became unconscious and thereafter died. P.W. 8 has further stated that he wanted to record the dying declaration, however, in the meanwhile he died. P.W. 8 has also stated that in this connection he had given the first supervision note to the Investigating Officer. In paragraph no. 2 of his cross-examination, P.W. 8 has stated that he does not remember that where he was at the time when he had received information, however, he has stated that it was about 7-8 P.M. in the night when he had received information. In paragraph no. 9 of his cross-examination, he had



stated that before he had reached the hospital, the Police had gone to the hospital and seen the deceased Pramod who was injured on account of gun shot injury and he was kept in the emergency at the hospital. In paragraph no. 10 of his cross-examination, P.W. 8 stated that the deceased Pramod was conscious when he had reached there. In paragraph no. 11 of his cross-examination, he stated that he had not immediately informed any Magistrate but still he had enquired and after sometime Pramod died. In paragraph no. 12 of his cross-examination, P.W. 8 stated that when he was in the hospital premises, he heard hulla that Ashok Yadav had come in the hospital premises and was caught. In paragraph no. 13 of his cross-examination, he stated that he had given direction to the Investigating Officer in his supervision note to take print out of the mobile phone from which the informant had given information to the police station. In paragraph no. 14 of his cross-examination, P.W. 8 had stated that he had given direction to the Investigating Officer to collect information about the murder of the deceased and about the character of the appellants.

20. Upon consideration of the entire evidence it is evident that there is material contradictions in the evidence of the witnesses and the witnesses do not seem to be reliable. The informant who has been examined as P.W. 6 has stated in his evidence that he had seen that the appellants Ashok Yadav and Lal Yadav had caught the deceased Pramod Yadav and the appellant Birendra had fired gun shot at the deceased Pramod Yadav after taking out three not three from his waist, however, in his cross-examination he has stated that when he was at the first pulia he had not heard the sound of gun fire and while he had moved ahead of first pulia on foot along with his cycle and was about to climb his cycle then he heard the sound of gun shot firing and then he heard his brother shouting and saw that his brother has been killed by gun shot and when he reached near



his brother he found that his brother had fallen down and was writhing in pain. It is apparent that P.W. 6 has given contradictory version and does not seem to be an eye witness to the occurrence. Similarly, P.W. 6 i.e. the informant Rajesh Kumar Yadav and P.W. 2 Sanjay Kumar, brother of the informant have said that the deceased Pramod was drenched with blood and when they had held him and were looking after him, they had also got blood stains all over their clothes, however, neither the blood stained clothes of the deceased nor the blood stained clothes of the witnesses were seized by the Investigation Officer/ Police much less sent for forensic examination. The entire case as put forth by the prosecution is belied from the evidence of P.W. 4 Babita Devi, wife of the deceased who has stated that her husband had left home at 11:00 A.M. in the morning after getting a call on his mobile and at that time the informant Rajesh (informant and brother of the deceased Pramod), her father-in-law mother-in-law and three sister-in-laws were present in the house. In paragraph no. 44 of her cross-examination, P.W. 4 has stated that after receiving information about the incident, all the brothers of her husband and her father-in-law had hurriedly gone to the place of occurrence. The evidence of P.W. 4 clearly shows that the informant was at his house / residence at the time of the alleged incident and he had gone to the place of occurrence after receiving information about the occurrence, however, the informant has stated in his evidence that he had gone with the deceased Pramod to Singheshwar at 4:00 P.M. in the evening on 02.03.2010 for purchasing domestic articles and medicine and were returning back to their residence at about 8:00 P.M. whereafter the incident had taken place. There is material contradiction in the statement of the informant and therefore he does not seem to be a truthful witness.

21. Further, the ocular evidence led by the prosecution with regard to



the injuries sustained by the deceased Pramod also do not corroborate with the injuries found by the doctor during the course of postmortem, hence the case as set forth by the prosecution does not seem to be true. Although the witnesses have said that 30-35 or may be more persons were present at the place of occurrence, however, none of the independent witnesses except P.W. 1 who has not deposed anything substantial, have been examined in order to strengthen the case of the prosecution. The motive has also not been established inasmuch as all the witnesses have said that the deceased Pramod did not have any quarrel with all the three appellants herein.

22. Yet another aspect of the matter is that the story as put forth by the informant is not probable to the effect that when he had confronted the appellants herein, the appellants had threatened to kill the informant if he did not run away, thus it is intriguing as to why any accused persons who have just shot the victim with a view to kill him would spare a witness to testify against them. The evidence of all the witnesses i.e. P.W. 1 to P.W. 5 are also inconsistent and moreover none of them are eye witnesses and in fact it also does not appear that they had seen the aforesaid three appellants fleeing since neither the source of light nor the torch by which some of the said witnesses claim to have seen the accused persons, have either been seized or produced before the court and exhibited in the present proceedings. Moreover, the said witnesses are also not consistent on the issue of the number of fire arm being carried by the accused persons and there is variance in their evidence on the said issue. The Investigating Officer has failed to identify the place of occurrence inasmuch as neither any mark of the alleged incident was found at the place of occurrence nor any material evidence was collected from the place of occurrence nor any cartridges were seized nor any blood soaked soil was seized or seen by the



Investigating Officer nor any other evidence was found or collected by him to show that the occurrence had taken place at the alleged place of the incident. Thus the place of occurrence has not been established. Further, there is also contradiction in the evidence of the witnesses with regard to the mode and manner of carrying the deceased to the hospital. The doctor who had examined the injuries of the deceased at the very inception has also been withheld and not examined in the present proceedings, hence, the narration of the incident by the deceased to the Dy. S.P. cannot be relied upon. Another contradiction is that, according to the informant he had immediately given information to his family members and the Police whereafter the Police had arrived but the Investigating Officer in his evidence has stated that while he was on patrol duty he got information that some incident has taken place at Domashi Chowk and then he had gone at that place of occurrence for verification. The time of occurrence also varies in the evidence of various witnesses. Moreover, the case as propounded by the Prosecution does not seem to be probable inasmuch as if the accused persons had planned to kill the deceased then there was no reason to firstly take the deceased away from the informant and then again bring him back to the market and then kill him in presence of his brother. The accused persons could have very well killed the deceased at a lonely place after taking him away on their motorcycle. In fact the Dy. S.P. appears to be having doubt about the incident and that is why he had issued directions in his supervision note to verify the call records of the mobile by which the informant had informed the police station as also collect information about the character of the appellant Ashok. Moreover, upon perusal of the evidence of the Investigating Officer i.e. P.W. 10, it is apparent that there are contradictions in the statement of the witnesses made under sections 161 of the Cr.P.C. and the one made in their deposition during the



course of the trial.

23. After going through the materials on record and the evidences, we are of the opinion that the prosecution has not proved the case beyond all reasonable doubt and as such the appellants of all the three Criminal Appeals deserve to be given the benefit of doubt. Accordingly, the judgment of conviction dated 30.08.2012 and sentence dated 13.09.2012 passed in Sessions Trial No. 95 of 2010 is hereby set aside. The appellant of Criminal Appeal (DB) No. 973 of 2012 i.e. Lal Yadav and the appellant of Criminal Appeal (DB) No. 1035 of 2012 i.e. Ashok Yadav were granted bail vide order dated 13.08.2014, however, the appellant of Criminal Appeal (DB) No. 988 of 2012 i.e. Birendra Yadav is in custody. Considering the fact that all the aforesaid three appellants have been acquitted, the two appellants namely Lal Yadav and Ashok Yadav, who are already on bail are hereby discharged from their liability of bail bonds and the appellant Birendra Yadav, who is in jail, is hereby directed to be released forthwith, if not required in any other case.

24. The aforesaid three appeals are hereby allowed.

(Mohit Kumar Shah, J)

Rakesh Kumar J.: I agree.

S.Sb/-

(Rakesh Kumar, J)

AFR/NAFR	AFR
CAV DATE	01-12-2017
Uploading Date	19-12-2017
Transmission Date	19-12-2017

