

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 266 of 1993

Arising Out of PS.Case No. -120 Year- 1982 Thana -JAINAGAR District- MADHUBANI

- 1. Ramu Yadav, son of Balgovind Yadav.
 - 2. Ram Chandra Yadav, son of Bal Govind Yadav.
 - 3. Balgovind Yadav, son of Gangai Yadav (Abated, since dead)
 - 4. Ram Autar Yadav, son of Uchit Yadav.
 - 5. Bisundeo Yadav, son of Mahavir Yadav.
 - 6. Bechan Yadav, son of Mahavir Yadav.
 - 7. Brahmdeo Thakur, son of Deo Nandan Thakur.
- All residents of Village Khaira Tol (Dulli Patty), Police Station – Jainagar, District – Madhubani.

.... Appellants

Versus

The State of Bihar

.... Respondent/Opp. Party

with

Criminal Appeal (DB) No. 281 of 1993

Arising Out of PS.Case No. -120 Year- 1982 Thana -JAINAGAR District- MADHUBANI

- 1. Sundar Lal Yadav, son of Bacharan Yadav.
 - 2. Shital Yadav, son of Sundar Lal Yadav.
 - 3. Kushe Sahni, son of Phaguni Sahni.
 - 4. Ram Bhajan Das, son of Bilat Das.
- All residents of Village – Marhia, Tole Kamlu-Bari, Police Station – Basopatty, District – Madhubani.

.... Appellants

Versus

The State of Bihar

.... Respondent/Opp. Party

Appearance :

- (In CR. APP (DB) No. 266 of 1993)
- For the Appellant/s : Mr. Ajay Thakur, Advocate
- Mr. Md. Imtiyaz Ahmad, Advocate
- For the Respondent/s : Mr. Ajay Mishra, A.P.P.
- (In CR. APP (DB) No. 281 of 1993)
- For the Appellant/s : Mr. Ajay Thakur, Advocate
- Mr. Md. Imtiyaz Ahmad, Advocate
- For the Respondent/s : Mr. Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT



(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)
Date: 11-07-2017

Aforesaid two appeals were preferred against judgment dated 29th May, 1993 as well as order dated 3rd June, 1993 on the point of sentence passed by Sri J.P.Paul, learned 1st Additional Sessions Judge, Madhubani (hereinafter referred to as 'Trial Judge') in Sessions Trial No. 36 of 1983/90 of 1985 (arising out of Jainagar P.S. Case No. 120 of 1982) registered for offence under Sections 302, 201, 120(B) of the Indian Penal Code and as such, both the appeals were heard together and are being disposed of by this common judgment.

2. By the said judgment, all the aforesaid appellants were held guilty and convicted under Sections 120(B) & 201 read with Section 302 of the Indian Penal Code and all the accused persons were sentenced to undergo rigorous imprisonment for 14 years under Section 120(B) of the Indian Penal Code and under Section 201 read with Section 302 of the Indian Penal Code, they have further been sentenced to undergo rigorous imprisonment for three years. It appears that learned Trial Judge inadvertently, instead of recording sentence of 14 years under Section 201 r/w Section 302 of Indian Penal Code, has recorded sentence of 14 years under Section 120B of the Indian Penal Code and sentence



of three years under Section 120(B) of Indian Penal Code has incorrectly recorded Section 201 r/w Section 302 of Indian Penal Code.

3. Prosecution case in short is that one Bindeshwar Mahto (P.W.7) son of Late Durga Mahto of village Khaira Tole , P.S. Jainagar along with his villagers Ram Prasad Yadav (not examined), Asheshwar Mahto (P.W.-6) came to the Jainagar Police Station on 24.09.1982 at about 9:00 A.M. and gave *fardbeyan* in respect to the occurrence that took place on 23.09.1982, which was recorded by Sri Nand Kishore Choubey (P.W.-9), Sub-Inspector of Jainagar Police Station. It was alleged by the informant that on 23.09.1982 at about 6:00 P.M., he was at his house. At that time, Ram Bhajan Tatwa, son of Bilas of village Marhiya, Tole Kamala Bari came at the door of his house and he met his nephew Shyam Chandra Mahto, aged 25 years, son of Kapleshwar Mahto to accompany him and so both of them proceeded in the *Baadh* situated in the south of his village. At the time, in the south of the village where his nephew Shyam Chandra Mahto and Ram Bhajan Tatwa had gone, Sital Yadav, son of Sunderlal Yadav and Kushwa Sahni, son of Faguni Sahni of village Marhiya, tole Kamala Bari were talking between themselves and



they also went in the *Baadh* situated in the south of the village following his nephew Shyam Chandra Mahto and Ram Bhajan Tatwa. At about 7:00 P.M., he also went in the south of the *Baadh* to see his field and there he heard cry that murder was committed. On hearing this cry, he went ahead and flashed the torchlight. In the flash of the torchlight, he saw Ramu Yadav, Bisundeo Yadav, Bechan Yadav, Ramautar Yadav, Balgovind Yadav, Brahmdeo Thakur, Ram Chandra Thakur alias Kaila of village Khaira Tole, P.S. Jainagar, Sunderlal Yadav, Sital Yadav, Ram Bhajan Tatwa, Kushwa Sahni of village Marhiya, P.S. Basopati armed with spade, *bhala* and *lathi* assaulting his nephew Ram Chandra Mahto. At the flash of torchlight, among them Ramu Yadav and Brahmdeo Thakur proceeded towards him. He put off the flash of the torchlight and returned back out of fear. There, he found his co-villagers Ram Bilas Mahto, son of Late Shiv Mahto, Ram Prasad Yadav, son of Late Janki Yadav, Persuram Mahto, son of Faudar Mahto and Asheshar Mahto, son of Chaudhary Mahto, who had gone in the *Baadh* to irrigate and see their field. He told them that he saw his nephew Shyam Chandra Mahto being assaulted by aforesaid named accused persons in the field of Chaudhary Mahto, son of Late Nebat Mahto and then, he along



with them proceeded towards the field of Chaudhary Mahto. Then, there was no cry of his nephew. He saw all accused persons were carrying the dead body of his nephew Shyam Chandra Mahto towards east south. When he along with aforesaid witnesses reached in the field of Chaudhary Mahto, he saw huge quantity of blood there. He also found blood on the field being cleaned with the help of spade. In the west of it in the corner of sugarcane field, he also found blood. He came to the conclusion that his nephew had been murdered and his dead body had been taken away by them. He along with other villagers, as named above, searched out the dead body in the *Baadh*, but the dead body of his nephew was not found. He also found blood in the barren land of Saryu Singh. He also saw a *Gamachha* of his nephew in the field of Chaudhary Mahto, where huge quantity of blood was found. He and his co-villagers searched out the dead body of his nephew Shyam Chandra Mahto in the night and in the early morning, but no any trace was found. The reason for the occurrence was that his nephew Shyam Chandra Mahto had taken Sital Yadav and Sunderlal Yadav to Darbhanga with Rs. 5000/- which was made double. Again, his nephew went to Darbhanga with Sunderlal Yadav along with Rs. 45,000/- to make it double.



This time, this Rs. 45000/- could not be made double. So, there had been scuffle among his nephew Shyam Chandra Mahto, Sunderlal Yadav & his son Sital Yadav and Sunderlal Yadav had slapped his nephew in village Dullipatti and had told his nephew that he had done misappropriation of his 45,000/- rupees. Apart from above, his nephew had also filed a case against accused Ramu Yadav and others for irrigating field.

4. Thereafter, on the basis of *fardbeyan* of Bindeshwar Mahto (P.W.-7), which was recorded on 24-09-1982 at 9:00 A.M., an F.I.R., vide Jainagar P.S. Case No. 120 of 1982, was registered. As stated, the *fardbeyan* was recorded in Jainagar Police Station. In the F.I.R., altogether 11 persons were made accused, who all are appellants before this Court, however; after investigation, chargesheet was submitted on 17-01-1983 against 10 accused persons namely 1. Ramu Yadav, 2. Bishundeo Yadav, 3. Bechan Yadav, 4. Ram Autar Yadav, 5. Balgovind Yadav, 6. Ram Chandra Yadav, 7. Brahmdeo Thakur, 8. Ram Bhajan Das, 9. Kushwa Sahni and 10. Shital Yadav. After submission of chargesheet, on 18-02-1983, the learned Magistrate took cognizance of offence under Sections 302, 201, 120(B) of the Indian Penal Code against all the 10 chargesheeted accused persons and after compliance of



provision under Section 207 of the Cr.P.C., on 18-03-1983, the case was committed to the court of sessions, which was numbered as Sessions Trial No. 36 of 1983. On 26.07.1986, charges were framed against all the charge-sheeted 10 accused persons. However, without examination of any witness, subsequently, a petition was filed on behalf of the informant for summoning and addition of Sundarlal Yadav, a accused, who was not sent up for trial. On 22-11-1986, the learned Trial Judge did not pass any order on petition for summoning appellant/Sundarlal Yadav in absence of examination of any witness. Thereafter, prosecution examined Ram Bilash Mahto (P.W.-5) and Ashesher Mahto (P.W.-6), as P.W.-1 and 2 respectively and since, in their evidence, name of Sundarlal Yadav transpired, the learned Trial Judge directed for summoning Sundarlal Yadav by its order dated 26-09-1987 and thereafter, on 28-03-1988, charges were framed against him under Sections 302, 201 read with Section 120(B) of the Indian Penal Code to face trial with accused persons, who were already put on trial. Thereafter, trial commenced. During the trial, to prove the case from prosecution side, nine prosecution witnesses were examined, namely; Persuram Mahto (P.W.-1), Chaitu Mandal (P.W.-2), Yogendra Mahto (P.W.-3), Kuldip Mahto (P.W.-4), Ram



Bilas Mahto (P.W.-5), Ashesher Mahto (P.W.-6), Bindeshwar Mahto (P.W.-7 as well as informant), Dr. P.N. Khanna (P.W.-8) and Nand Kishore Choubey, Investigating Officer (P.W.-9), whereas earlier same P.W.5 Ram Bilas Mahto and P.W.2, Ashesher Mahto were examined as P.W.1 and P.W.2 respectively.

5. During examination, P.W.-1 namely Persuram Mahto had turned hostile.

6. P.W.-2 (Chaitu Mandal) was a witness to the seizure list regarding seizure of *Gamachha* of the deceased and on the said seizure list, his signature was marked as **Ext.- 1**. He proved the signature of one another witness Ram Chandra Yadav on the said seizure list and his signature was marked as **Ext. 1/1**. P.W.-2 further proved his signature on seizure list relating to recovery of blood stained soil, which was seized from the field of one Ram Swarth Kunwar, as **Ext. 1/2**. On the same seizure list, he proved signature of Ram Chandra Yadav, which was marked as **Ext. 1/3**. He further proved his signature on the seizure list relating to seizure of blood-stained soil from the field of Bilat Singh and he proved his signature as **Ext. 1/4**, whereas, signature of Ram Chandra Yadav, on the same seizure list was marked as **Ext. 1/5**.



7. Yogendra Mahto (P.W.-3) is another seizure list witness in respect of seizure of big bag with blood stain, which was recovered from a well of one Kuldeep Mahto and he proved his signature, which was marked as **Ext. 1/6**. He also proved signature of Kuldeep Mahto on the said seizure list, which was marked, as **Ext. 1/7**. P.W. -3 was also a witness to the inquest report in respect of recovery of dead body, which was marked as **Ext. 1/8**. Over the same inquest report, he proved signature of Kuldeep Mahto, which was marked as **Ext. 1/9**. He was also witness to the seizure list relating to seizure of one bamboo (बांस) and he proved his signature, which was marked as **Ext. 1/10** and signature of Kuldeep Mahto, which was marked as **Ext. 1/11**. He was also witness to the seizure list regarding recovery of rope and he has proved his signature on the seizure list of rope and has proved signature of Kuldeep Mahto, which was marked as **Ext. 1/12** and **1/13** respectively.

8. P.W.-4 Kuldeep Mahto was tendered and as such, there is nothing to take note of his evidence.

9. P.W.-5 Rambilash Mahto and P.W.-6 Ashesher Mahto have claimed to be eye-witness to the occurrence, whereas, Bindeshwar Mahto, who is informant of the case and also eye-



witness to the occurrence, has been examined as P.W.-7.

10. Dr. P.N. Khanna, who had conducted *post-mortem* examination on the dead body of the deceased, was examined as P.W.-8. He has also proved the *post-mortem* examination report, which was marked as **Ext. - 2**. During *post-mortem* examination, following injuries were found:-

- “(i) incised wound 1” X ½ “ X ½ “ over left upper lip
- (ii) incised wound 6” X 2” muscle deep in front of neck with cutting of larynges, tracheal, oesophagins, carotide vessels and fracture of hyoid bone.
- (iii) Incised wound 2” X 1” X 1” over left cheek with fracture of left mandible.
- (iv) Incised wound 1” X ½ “ X ½ “ over right side of the cheek.
- (v) Incised wound 1” X 1” X 1” over right ear.
- (vi) Punctured wound ½” X ½” X ¾” over left ear.
- (vii) Incised wound 3” X ½” X ½” over nostril surface of the scalp with fracture of occipital bone.
- (viii) Incised wound ½” X ½” X 1” over left shoulder.
- (ix) Incised wound 2” X 1” X 1½” over right upper arm.
- (x) Incised wound 4” X 1” X 2” over right



shoulder.

- (xi) Incised wound 2" X 1" X 1" over right elbow joint.
- (xii) Punctured wound ½" X ½" X ¾" over left palm.
- (xiii) Incised wound 4" X 2" X 1" over abdomen.
- (xiv) Incised wound ½" X ½" X ½" over left leg below knee joint.
- (xv) Incised wound 2" X 1" X 1 ½" over right glottal region.
- (xvi) Incised wound 3" X 1" X 1" over back of the chest.
- (xvii) Bruise 3" X 3" over right side of the chest with fracture of 3rd, 4th & 5th rib right side."

11. The investigating officer Sri Nand Kishore Choubey was examined, as P.W.-9.

12. Sri Ajay Thakur, learned counsel assisted by Md. Imtiyaz Ahmad, learned counsel for appellants in both the appeals has argued that all the appellants were falsely implicated in the present case. He submits that the case of the prosecution is apparently doubtful. According to him, the informant, who had claimed to be eye-witness as well as uncle of the deceased (Shyam Chandra Mahto) in his fardbeyan as well as deposition before the



Trial Court, has categorically stated that on the date of occurrence i.e. on 23-09-1982 at about 7:00 P.M. after hearing cry of his nephew namely Shyam Chandra Mahto he rushed towards the place and he noticed that all the accused persons were brutally assaulting his nephew. Thereafter, he stated that he returned back and alongwith P.W.-1 (Persuram Mahto), P.W.-5 (Ram Bilash Mahto) and P.W.-6 (Ashesher Mahto) he again moved towards the place of occurrence and saw that accused persons, after killing his nephew, had lifted his dead body on a bamboo, which was tied by rope and they were moving forward. Sri Thakur, learned counsel for appellants submits that this witness (informant) has said that he also chased the accused persons for a while and thereafter, he returned back and with 30-40 villagers again went to the place of occurrence to locate the dead-body and he stated that he had found blood-stain on the field. According to Sri Thakur, once the uncle of the deceased had seen that his nephew was being brutally assaulted by accused persons and thereafter, dead body of his nephew was being carried by a bamboo, there was no reason for him to stay for whole night in his house without intimating to the police. He states that the informant himself has said that on the next date at about 9:00 A.M. in the morning, he



reached the police station and on the basis of his *fardbeyan*, the F.I.R. was lodged. He has further drawn our attention to statement of the informant (P.W.-7) in paragraph – 28 of his cross-examination and highlighted that this witness had accepted that he was having a bicycle, but even then, he has stated that on the date of occurrence for whole night he remained at his house. Sri Thakur submits that the conduct of P.W.-7 (own uncle of the deceased) appears to be not normal. According to him, in a case, where nephew of the informant was done to death and his dead-body was taken away by the accused persons, the informant would have immediately informed the police to trace the body of the deceased, but his stay for whole night in his house creates serious doubt. Sri Thakur has further argued that the dead-body was recovered on the lead given by the dog squad, which was called by the investigating officer and on 25th of September, 1982. On the lead being given by the dog, firstly, *Gamachha* of deceased was shown recovered, thereafter, blood-stained soil was seen and a case was made out regarding recovery of a bamboo and rope from a different place. He has drawn our attention to statement of P.W.-9 the investigating officer and submits that in the case, at least there were four place of occurrence. The dog had given lead



up to a well near the *Baandh* area and subsequently, from the well, a big bag, which was stained with blood, was fished out and thereafter, the investigating officer found the dead-body in a field. According to learned counsel for appellants, it appears that after recovery of the dead-body, the case was planted as if all the appellants had participated in the occurrence and they killed the nephew of the informant. By way of referring to *fardbeyan*, he submits that the deceased was indulged in doubling the currency notes and it was alleged that he had misappropriated about Rs. 45,000/- (Forty five thousand) of appellant/Sundarlal Yadav. He submits that had it been a case of cheating, in normal course, the appellant (Sundarlal Yadav), instead of killing, would have preferred to take step for recovery of the money. It has been argued that falsity of the case is proved from the fact that though F.I.R. was allegedly lodged on 24th September, 1982, the F.I.R. was received in the court of learned Chief Judicial Magistrate on 30th September, 1982. He submits that circumstances, which show recovery of the dead body, suggest that the F.I.R. was lodged by ante-dating and due to old admitted animosity with the appellants as well as informant side, all the appellants were framed in the case. Accordingly, it has been argued that on the evidence on



record, there was possibility to draw an inference that appellants were innocent. According to him, unless in a criminal case, entire evidence suggests regarding guilt of the accused, one is not required to be convicted. In any event, in such cases, benefit of doubt is required to be extended to the accused persons.

13. Sri Ajay Mishra, learned Addl. Public Prosecutor has vehemently opposed both the appeals. He submits that in the case, there is consistency of the evidence. According to Sri Mishra, occurrence was witnessed by the informant himself and same was also seen by P.W.-5 (Ram Bilash Mahto) and P.W. – 6 (Ashesh Mahto). He submits that all the three eye-witnesses have consistently said that they had seen that accused persons were carrying away the dead body of the nephew of the informant on a bamboo. He further submits that P.W.-7 (informant) is consistent on the point that after hearing cry of his nephew, he arrived at the place of occurrence and noticed that his nephew was being brutally assaulted by all the accused persons by various arms, such as; *bhala*, *garassa*, *kudal* (spade) and *lathi*. He submits that the informant is categorical on the point that all the accused persons were brutally assaulting and this is the reason that in *post-mortem* examination report, the doctor (P.W.-8) has found



several injuries on the vital part of the deceased. He submits that altogether 17 incised as well as punctured injuries were found on the dead-body of the deceased. According to him, the investigating officer, in his cross-examination, had categorically stated that immediately after lodging F.I.R., he had sent the F.I.R. to the court through special messenger, however; he does not dispute that F.I.R. was received in the court on 30th September, 1982. He further submits that even from the premises of one of the accused Ram Bhajan Das (appellant no. 4 in Criminal Appeal (DB) No. 281 of 1993), one *Lungi* with blood stain was recovered, for which, seizure list was prepared and was sent to the Forensic Science Laboratory and report has also come, however; he accepts that the report (**Ext.-6**) does not specifically says that blood stain, on the *Lungi* seized from the premises of Ram Bhajan Das, was of the deceased or not.

14. Besides hearing learned counsel for the parties, we have minutely examined the evidences, which have been brought on record during the trial. On going through the same, it is evident that P.W.-1 (Persuram Mahto) in the First Information Report was shown to be a witness to the occurrence, however; he did not support the prosecution case and he was declared as



hostile. Similarly, evidence of P.W.-4 (Kuldeep Mahto) has got no relevance, since he was only tendered during the trial, whereas, P.W.-2 (Chaitu Mandal) and P.W.-3 (Yogendra Mahto) are witnesses to the number of seizure list and inquest report. During trial, prosecution has examined three eye-witnesses namely P.W.-5 (Ram Bilash Mahto), who was close relative of the deceased, P.W.-6 (Asesher Mahto) and P.W.-7 (Bindeshwar Mahto, informant and uncle of the deceased). It is true that the witnesses had claimed to be eye-witness to the occurrence and there is no major inconsistency in their evidence, but fact remains that there is no explanation as to why even though occurrence related to brutal murder of the deceased i.e. nephew of the informant was noticed at about 7:00 P.M. on 23-09-1982, what was the reason that informant and others, after noticing that the deceased was brutally assaulted and his dead-body was carried away by the accused persons, did not bother to send any information to the police or why the informant did not go immediately to the police station at least to search dead-body of his nephew. On the contrary, he himself has accepted in paragraph – 28 of his cross-examination that he was having bicycle but he remained at his residence for whole night on the date of occurrence. Even if for



the time being, it is assumed that there was some reason that in the night there was difficulty to go to the police station, on the next date also, he had not bothered to reach police station at the earliest, but in leisurely manner, he reached police station at about 9:00 A.M. and thereafter, he gave information regarding the occurrence and on the basis of his *fardbeyan*, an F.I.R. was lodged. The investigating officer, after recording F.I.R., reached the place of occurrence and he noticed that there were altogether four places of occurrence, since on those places either blood-stain was found on the field or other materials were noticed. The area of the place of occurrence differs from several yards from each other. Though, investigating officer arrived at the place of occurrence on 24-09-1982, according to prosecution, on 24th itself the dead body was not recovered and one day after lodging of F.I.R. i.e. on 25th September, 1982, the police got the assistance of dog squad, which led to the recovery of *Gamacha* of the deceased, one bag with blood stain from a well, bamboo and rope. Subsequently, the dead body of deceased was found in the field. The investigating officer as well as witnesses have stated that in the field, there were cane crops, which were having length of 5-7 hands.

15. Since, the prosecution case is completely based on



the evidence of P.Ws. 5, 6 & 7, who have claimed to be eye-witnesses to the occurrence, it is apt to cursorily deal with their evidences.

16. P.W.-7 (Bindeshwar Mahto), who is informant of the case, has claimed that firstly he heard the cry of his nephew (deceased) and thereafter, he rushed to the field and he had claimed that he saw that his nephew was being brutally assaulted by all the 11 appellants, who were variously armed, such as; *garassa*, *bhala*, *kudal* (spade) and *lathi*. In paragraph – 1, he has stated that about 7:00 P.M. (evening), he had gone to watch his field, thereafter, he heard cry “बाप रे बाप खुन कर रहा है।”. Thereafter, in his torchlight, he saw that accused Sundar Lal Yadav (appellant no. 1 in Cr.Appeal DB No. 281 of 1993), Shital Yadav (appellant no. 2 in Cr.Appeal DB No. 281 of 1993), Kushe Sahni (appellant no. 3 in Cr.Appeal DB No. 281 of 1993), Ram Bhajan Das (appellant no. 4 in Cr.Appeal DB No. 281 of 1993), Ramu Yadav (appellant no. 1 in Cr. Appeal DB No. 266 of 1993), Ram Chandra Yadav (appellant no. 2 in Cr. Appeal DB No. 266 of 1993), Balgovind Yadav (appellant no. 3 in Cr. Appeal DB No. 266 of 1993), Ram Autar Yadav (appellant no. 4 in Cr. Appeal DB No. 266 of 1993), Bishundeo Yadav (appellant no. 5 in Cr. Appeal DB



No. 266 of 1993), Bechan Yadav (appellant no. 6 in Cr. Appeal DB No. 266 of 1993) and Brahmdeo Thakur (appellant no. 7 in Cr. Appeal DB No. 266 of 1993) were assaulting Shyam Chandra Mahto (nephew of the informant). He stated that accused persons were assaulting Shyam Chandra Mahto by means of *bhala*, *garassa*, *lathi* and *kudal* (spade). Thereafter, he reached to Ram Prasad Yadav and told that aforesaid accused persons were assaulting his nephew. He further stated that thereafter, Ram Prasad Yadav (not examined), Rambilash Mahto (P.W.-5), Ashesher Mahto (P.W.-6) and Persuram Mahto (P.W.-1) went to the field of Chaudhary Mahto, where the accused persons were assaulting his nephew. In paragraph – 2, P.W.-7 has claimed that in the torchlight, he saw that aforesaid accused persons had tied the dead body of Shyam Chandra Mahto on a bamboo and they were carrying away the dead body. He further stated that at the place of occurrence, he had noticed blood-stain and also *Gamachha* of his nephew. He categorically stated that some blood-stained soil was scratched by spade. He further stated that from the field of Chaudhary Mahto towards eastern field of Ram Swarth Singh, he had noticed blood on the earth and also stated that blood-stained soil were scratched. He had also said regarding



noticing blood stain in the field of Bilat Singh and earth was scratched. He stated that in the said night, he searched the dead body of Shyam Chandra Mahto and on the next morning also, he tried to search and thereafter, on 24-09-1982 at about 9:00 A.M. he went to the police station alongwith Ram Prasad Yadav and Ashesher Mahto (P.W.-6). He further stated that he had given statement to the police in the police station itself. In paragraph – 3, he stated that the police officer had called for dog squad, which arrived on 25-09-1982 at about 4:00 P.M. (evening) for searching the dead body of Shyam Chandra Mahto. He stated that on the same date i.e. on 25-09-1982 in the evening, the dead body of Shyam Chandra Mahto was found buried near the Naroha Baandh (Naroha Dam), which was recovered by the lead given by the dog squad. Regarding the motive, P.W.-7 in paragraph – 4 has stated that prior to the occurrence, the deceased alongwith accused Shital Yadav and Sundar Lal Yadav had gone to Darbhanga for doubling the currency notes and Rs. 5,000/- (five thousand) was doubled as Rs. 10,000/- (ten thousand). Thereafter, again the accused had gone with the deceased for doubling the currency note, but this time the money was misappropriated and this was the reason that the accused Shital Yadav (appellant no. 2 in



Cr.App.DB No. 281/1993) and Sundar Lal Yadav (appellant no. 1 in Cr.App.DB No. 281/1993) had demanded Rs. 45,000/- (forty five thousand) from Shyam Chandra Mahto. P.W.-7, in paragraph – 5, has accepted that prior to the said occurrence, deceased Shyam Chandra Mahto had lodged a case against accused persons namely Bishundeo Yadav (appellant no. 5 in Cr.App.DB No. 266/1993) and others regarding dispute of irrigation. This witness had accepted that deceased was only son of his father and he (informant) was own brother of his father. He accepted that the father of the deceased was alive but he had not come to depose in the case. He accepted that his nephew was indulged in doing doubling of currency notes since 1982. In his cross-examination, in paragraph 15, he stated that in the night of the occurrence, he had not gone to the police station for giving information nor he had asked anyone to go to the police station for giving information and on the next date, at 9:00 A.M. he had gone to police station. He accepted that distance to the police station from his house was 7 km. and out of 7 km., 3 km. was metallic road. He stated that he had gone to police station on foot, whereas, in paragraph – 28 of his cross-examination, he had accepted that he was having a bicycle and he was cycling even since prior to the occurrence and



he accepted that in the night of the occurrence, he stayed at his house. In paragraph – 27 of his cross-examination, he stated that for the first time, he had seen all the accused persons had surrounded Shyam Chandra Mahto (deceased), however; he was not in a position to explain as to whether Shyam Chandra Mahto (deceased) was in standing position or he was fallen. He has also said that he was not sure as to whether at that very time Shyam Chandra Mahto was dead or not.

17. Similarly, P.W.-5 (Ram Bilash Mahto), whose appearance had come on second occasion i.e. after being informed by the informant about assault being given to Shyam Chandra Mahto (deceased), this Ram Bilash Mahto (P.W.-5) had stated that on 23-09-1982 in the night he was sitting near Ram Prasad Yadav, where Bindeshwar Mahto (P.W.-7) arrived in running breathless condition and told that his nephew Shyam Chandra Mahto was being assaulted. Thereafter, P.W.-5 alongwith Ram Prasad Yadav (not examined), Ashesher Mahto (P.W.-6), Persuram Mahto (P.W.-1) and Bindeshwar Mahto (P.W.-7) moved to the Arhar field of Choudhary Mahto at about 7:00 P.M. (evening). He stated that all the accused persons i.e. Sundar Lal Yadav (appellant no. 1 in Cr.Appeal DB No. 281 of 1993), Shital Yadav (appellant no. 2 in



Cr.Appeal DB No. 281 of 1993), Kushe Sahni (appellant no. 3 in Cr.Appeal DB No. 281 of 1993), Ram Bhajan Das (appellant no. 4 in Cr.Appeal DB No. 281 of 1993), Ramu Yadav (appellant no. 1 in Cr. Appeal DB No. 266 of 1993), Ram Chandra Yadav (appellant no. 2 in Cr. Appeal DB No. 266 of 1993), Balgovind Yadav (appellant no. 3 in Cr. Appeal DB No. 266 of 1993), Ram Autar Yadav (appellant no. 4 in Cr. Appeal DB No. 266 of 1993), Bishundeo Yadav (appellant no. 5 in Cr. Appeal DB No. 266 of 1993), Bechan Yadav (appellant no. 6 in Cr. Appeal DB No. 266 of 1993) and Brahmdeo Thakur (appellant no. 7 in Cr. Appeal DB No. 266 of 1993) tying dead body of Shyam Chandra Mahto (deceased) with rope on a bamboo were moving towards east-south area. He claimed that he had identified accused persons in the torchlight. Thereafter, they returned back and subsequently, with 30-40 persons alongwith torch, lantern etc. they went to the place of occurrence and thereafter, he found *gamachha* in the field and he also noticed blood on the soil, which was scratched. From there, when he moved towards southern area, he noticed blood-stain in the field near a well, which was in the field of Ram Sagar. He also said that he had noticed blood stain in the field of Bilat Singh, where soil was scratched and they tried to locate the dead



body. In his cross-examination, he reiterated that he had stated before the police in his statement that he had seen that dead body of Shyam Chandra Mahto tied by a rope on a bamboo and accused persons were moving with the dead body, whereas, in the evidence of investigating officer, he had stated that P.W.-5 had not made such statement. In paragraph – 5 of his cross-examination, he had stated that at the time of occurrence in the field, there were crop of sugarcane, which were about 5-6 hands longer. He has also accepted in paragraph – 8 that in the night, he had not gone to the police station nor information was given to a chowkidar-dafadar. Even no one was sent to the police station.

18. P.W.-6 (Ashesher Mahto) has also stated like P.W.-5 and as such, there is no need to reiterate the same. However, in his paragraph – 3, P.W.-6 has accepted that the dead body was recovered with the lead of dog squad. He has further stated in paragraph – 7 of his cross-examination that two days after the date of occurrence, he had gone to the field and at that time also, he had noticed blood stain in the field. This P.W.-6 (Ashesher Mahto) in paragraph – 9 of his cross-examination has accepted that Bindeshwar Mahto (informant) was his uncle. Meaning thereby that deceased was his brother. He has also accepted that



in the night of the occurrence, he had not gone to give any information to the police.

19. The investigating officer, Sri Nand Kishore Choubey, who was examined as P.W.-9, has proved *fardbeyan* of the informant, which was marked as **Ext. – 3**. Seizure list relating to recovery of soil stained with blood and *gamachha* of deceased was marked as **Ext. – 4**. He proved the seizure list relating to recovery of blood-stained soil from the field of one Ram Swarth Kunwar, which was about 30 yards away from the first place of occurrence. He further proved the seizure list relating to blood-stained soil recovered from the field of Bilat Singh, as **Ext. 4/2**. This place was about 300 yards away from the place of occurrence. In his examination-in-chief, he has described about inspection of place of occurrences and he stated that on the lead of dog squad they reached near Naroha Baandh near the well of Jiwak Singh. The dog stopped there. Thereafter, the police recovered one big bag stained with blood from inside well regarding which, seizure list was prepared and marked as **Ext. 4/3**. He further stated that about 300 yards away from the said well in the *siswan* field of Kuldeep Singh, the dead body of deceased was recovered and thereafter, he prepared inquest report. This witness also proved



the inquest report, which was marked as **Ext.-5**. This witness has also stated regarding recovery of bamboo and seizure list was prepared, which was marked as **Ext. 4/4**. Besides bamboo, one rope about 8 hands long was recovered, for which, another seizure list was prepared, which was marked as **Ext. 4/5**. He also stated that a raid was conducted on the same date in the house of appellant Ram Bhajan Das (appellant no. 4 in Cr.App.DB No. 281/93) and from his house, one blood-stained *Lungi* was recovered. However, he accepted during cross-examination that regarding recovery of *Lungi*, no seizure list was prepared nor it was mentioned in the case diary. However, subsequently, he produced the seizure list relating to seizure of the *lungi*, which was got exhibited and marked as **Ext. 4/6**. This witness i.e. investigating officer was also given a suggestion that by ante-dating he had prepared the F.I.R. In paragraph – 18 of his cross-examination, he has categorically stated that during investigation from 18-09-1982 to 27-09-1982 appellant no. 1 in Cr. Appeal No. 281 of 1993 (Sundar Lal Yadav) was admitted in Jainagar Sadar Hospital.

20. It is relevant to mention here that initially, F.I.R. was lodged against 11 (eleven) accused persons, including



appellant/Sundar Lal Yadav, however; since during investigation, it was found that Sundar Lal Yadav at the relevant time was admitted in Jainagar Sadar Hospital, he was not charge-sheeted and chargesheet was submitted only against ten accused persons. In cross-examination, the investigating officer (P.W.-9) has stated that after drawing formal F.I.R. on 24-09-1982, he had immediately sent the F.I.R. to the court through special messenger on 25-09-1982, but he accepted that such fact was not recorded in the case diary as to who was the special messenger, who had produced the F.I.R. in the court of Chief Judicial Magistrate ? He accepts that F.I.R. was received in the court of learned Magistrate on 30th September, 1982.

21. We have minutely examined the entire record and the ordersheet. In the present case, a peculiar thing has been noticed by the Court that after submission of chargesheet against ten accused persons, the case was committed to the court of sessions in respect of ten accused persons, charges were framed against ten accused persons and thereafter, without examination of any witness from the prosecution side, a petition was filed for adding appellant/Sundar Lal Yadav, as accused with the accused persons facing trial under Section 319 of the Cr.P.C.. However, the



learned Trial Judge, instead of passing any positive order on such petition, asked the prosecution to firstly examine witnesses, thereafter, from prosecution side Asheshwar Mahto was examined as P.W.-1 on 24th September, 1987. It is relevant to note here that same Asheshwar Mahto was subsequently examined as P.W.-6. Similarly, Ram Bilas Mahto, who has been examined in the present case as P.W.-5, was examined on 24th September, 1987, as P.W.-2 and after examination of two witnesses, the learned Trial Judge summoned Sundar Lal Yadav to face trial alongwith the accused persons, who were already put on trial. It appears that only with a view to associate Sundar Lal Yadav with other accused persons two witnesses were got examined and subsequently, during the trial, same witnesses were examined as P.W.-6 and 5 respectively. This suggests that very first story given by the informant i.e. P.W.-7 was not beyond doubt. The investigating officer on record had noticed that at least Sundar Lal Yadav, who was named as accused in the F.I.R., was admitted in Jainagar Sadar Hospital and he was in hospital from 18-09-1982 to 27-09-1982 and as such, he was not chargesheeted by the police. Only on the basis of oral evidence of two witnesses, who were examined only for summoning appellant/Sundar Lal Yadav, the accused Sundar



Lal Yadav was added as accused under Section 319 of the Cr.P.C. The very absence of Sundar Lal Yadav (appellant no. 1 in Cr.App.DB No. 281/93), in view of evidence collected during investigation, creates doubt on the prosecution case, since in the F.I.R., the informant, who claims to be eye-witness, has stated that at the time of first occurrence, he had noticed Sundar Lal Yadav also alongwith other ten accused persons. So adding Sundar Lal Yadav as accused creates some doubt on the prosecution case. Secondly, the case of the prosecution is clouded with the doubt on the point that the informant, who claims to be own uncle of the deceased, though had stated that on the date of occurrence at 7:00 P.M. in the evening he had noticed that his nephew was brutally assaulted, his dead body was tying on a bamboo and accused persons had fled away with the dead body, without any rhyme and reason stayed in his house for whole of the night and on the next date, in leisurely manner, at 9:00 A.M., he reached the police station and gave information as if everything was noticed by him. In normal course, in such a situation, after noticing the occurrence, the uncle (P.W.-7) would have immediately rushed to the police station or he would have asked anyone to go and inform the police regarding the occurrence immediately after



noticing the occurrence. In normal course, it is not believable that the family member, after noticing regarding brutal murder, will silently remain in his house. It has rightly been suggested by Sri Ajay Thakur, learned counsel for appellants that by committing ante-dating the F.I.R. was lodged and this was the reason that F.I.R. though allegedly drawn on 24th September, 1982 was received in the court of learned Magistrate on 30th September, 1982. He has rightly argued that it appears that after the recovery of dead body i.e. on 25th September, 1982, a story was cooked up and all the respondents, who were already in inimical terms with the informant side, were made accused. Normally, belated receipt of the F.I.R. in the court of learned Magistrate may not be sufficient to create doubt on the prosecution case, but in the circumstances, in which the informant had said that for the whole night he remained in his house after noticing brutal murder and on the next date, he reached the police station, though the police station was only about 7 km. away from the house of the informant, creates serious doubt on the prosecution case. Even the eye-witness had said that immediately after the occurrence they had seen "Gamcha" in the field subsequently evidence has come that on the lead of Dog Squad seizure list of "Gamcha" was



prepared on 25.9.1982.

22. Considering the fact that though witnesses, who have claimed to be eye-witnesses, are close relative of the deceased and are consistent on the evidence, but the circumstance, which has emerged, suggests that the case of the prosecution was not beyond doubt. The F.I.R. was lodged next date in leisurely manner at 9:00 A.M. while informant had claimed about the brutal murder on his nephew in the evening on 23rd September, 1982 and the fact that F.I.R. was received in the court of learned Magistrate on 30th September, 1982 and also seizure of "Gamcha" on 25.9.1982 on the lead of Dog creates serious doubt on the prosecution case and as such, we propose to extend the benefit of doubt to all the appellants.

23. Accordingly, by way of giving benefit of doubt, both the appeals are allowed and judgment & conviction dated 29-05-1993 as well as order on the point of sentence dated 03-06-1993 passed in Sessions Trial No. 36 of 1983/90 of 1985 by Sri J. P. Paul, learned 1st Additional Sessions Judge, Madhubani are, hereby, set aside and both appeals allowed. All the appellants were directed to be released on bail at the time of admission of the appeals and as such, in view of setting aside of the judgment of



conviction and sentence, they are hereby discharged from the liability of their bail-bonds.

24. It is evident that during pendency of the appeal i.e. Cr. Appeal (DB) No. 266 of 1993, the appellant no. 3 namely Balgovind Yadav had died and as such, his case was abated and name was expunged from the record.

(Rakesh Kumar, J.)

(Mohit Kumar Shah, J.)

Anay

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	15.07.2017
Transmission Date	15.07.2017

