

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.130 of 1995

Against the judgment dated 31st Day of May, 1995 passed by learned 5th
Additional Sessions Judge, Gaya in Sessions Trial No.36 of 1993/370 of
1990, arising out of Guraru P S.Case No. -0033 of 1992, District- Gaya

- =====
- 1.Lakhan Yadav, son of Kripa Yadav,
 - 2.Badri Yadav, son of Ram Brat Yadav,
 - 3.Surendra Yadav,son of Ram Brat Yadav,
 - 4.Rabindra Yadav,son of Ram Brat Yadav,

All R/o Village-Bandaul, P.S-Guraru, Dist-Gaya

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

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Criminal Appeal (DB) No. 133 of 1995

Against the judgment dated 31st Day of May, 1995 passed by learned 5th
Additional Sessions Judge, Gaya in Sessions Trial No.36 of 1993/370 of
1990, arising out of Guraru P S.Case No. -0033 of 1992, District- Gaya

- =====
- 1.Suresh Yadav son of Chandarika Yadav,
 2. Naresh Yadav son of Chandarika Yadav

Both R/o Village-Bandane, P.S-Guraru, Dist-Gaya

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Miss. Anukriti Jaipuriyar (Amicus Curiae)

For the Respondent/s : Ms. S.B.Verma, A.P.P

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 18-05-2018



These two criminal appeals have been preferred for setting aside the common judgment dated 31st Day of May, 1995 passed by learned 5th Additional Sessions Judge, Gaya, (hereinafter referred to as the “learned trial Court”) in Sessions Trial No.36 of 1993/370 of 1990.

2. All the six accused persons involved in the Sessions Trial were charged for the offences committed under Section 148 of the Indian Penal Code and Section 27 of the Arms Act. Out of six accused, three of them namely Badri Yadav, Surendra Yadav and Lakhan Yadav were further charged under Section 302 of the Indian Penal Code for having committed murder by intentionally causing the death of one Devanand Yadav. The remaining three accused namely Surendra Yadav, Ravindra Yadav and Naresh Yadav were also charged under Sections 302/149 of the Indian Penal Code for their being members of the unlawful assembly in furtherance of a common object to commit the murder of Devanand Yadav.

3. By the impugned judgment the learned trial Court held all the accused persons guilty under Section 148 of the Indian Penal Code and Section 27 of the Arms Act. Accused Badri Yadav, Suresh Yadav and Lakhan Yadav who are the appellants in Criminal Appeal No.130 of 1999 have also been held guilty for the offences committed under Section 302 of the Indian Penal Code, the remaining three accused persons have also been held guilty for the offence committed under Section 302 read with Section 149 of the Indian Penal Code. The accused Badri Yadav, Suresh Yadav and Lakhan Yadav who are found to have fired from the country made pistols which hit the deceased at his chest, Kanpatti and head have been sentenced to undergo life imprisonment under Section 302 of the Indian Penal Code. The accused Suresh Yadav who was



charged under Sections 302/149 of the Indian Penal Code has been found to have abated the other accused persons to murder the deceased, therefore, he has been sentenced to undergo life imprisonment under Sections 302/149 of the Indian Penal Code. The remaining accused who have been charged under Sections 302/149 of the Indian Penal Code and were found members of unlawful assembly, were seen at the place of occurrence with country made pistols in their hand and had surrounded the deceased in furtherance of common object of the said unlawful assemble have been sentenced to undergo life imprisonment. Further all the six accused persons have been sentenced under Section 148 and Section 27 of the Arms Act to undergo rigorous imprisonment for one year and two years respectively. The sentences so passed have been ordered to run concurrently.

4. The prosecution case is based on the Fardbeyan of one Brajesh Yadav (P.W.6). In his Fardbeyan, P.W.6 alleged that the informant has got his land in the front of the house of his co-villager, Chanarik Yadav son of Bilash Yadav. At about 12 noon Suresh Yadav son of Chanrika Yadav with an intention to forcefully take possession of the land fixed a peg in the aforesaid land. The informant is said to have uprooted the peg and told Suresh Yadav not to do the wrong. It is stated that in the meantime his uncle Hevaldar Devendra Yadav son of Kashi Yadav had a quarrel on which the accused Lakhan Yadav, Naresh Yadav, Birendra Yadav, Bindeshwary Yadav and Dwarika Yadav who were along with Suresh Yadav threatened the uncle of the informant saying that he would be blown up. It is alleged that at about 03:00 P.M the informant along with his uncle (deceased of this case) came to Guraru Bazar and left at about 05:30 P.M. The informant claimed that he was on a bicycle whereas his uncle was coming on foot and was behind him. It is alleged that at a distance of about 200 yards ahead his uncle when he reached near the electric tower of Gauraiya Asthan



and reached on the road, five persons namely (i) Lakhan Yadav (ii) Suresh Yadav (iii) Surendra Yadav (iv) Badri Yadav and (v) Naresh Yadav came out of the paddy field. Apart from them Rabindra Yadav son of Ram Brat Yadav was also there. The informant alleged that the accused persons tried to catch hold of him and lift him but he fled away on his bicycle. It is alleged that his uncle who was behind him was caught by the accused persons and was being assaulted. The informant claimed that he stopped at a distance of 25-30 yards and saw that accused Lakhan Yadav, Suresh Yadav, Surendra Yadav and Badri Yadav had caught hold of his uncle, his uncle was trying to get rid of them but was not getting successful. It is alleged that Suresh Yadav ordered 'maro sale ko', on this Badri Yadav fired on his chest, Surendra Yadav fired on the left Kanpatti and Lakhan Yadav fired in the head of the uncle of the informant. It is alleged that after committing murder, the accused Naresh Yadav and Rabindra Yadav said that whosoever will come to the dead body he will also be killed. The informant is said to have raised hulla on which Pramod Yadav (P.W.5) came running, they caught hold of Badri Yadav but Badri Yadav fled away by pushing them. The informant further claimed that Mosafir Yadav (P.W. 1), Ram Janam Yadav (not examined) and Kapil Yadav (P.W.8) came running there and saw the accused persons fleeing away with pistols in their hands. The informant also mentioned another witness Tulsi Yadav (P.W.2) who is said to have seen the accused persons. The Fardbeyan (Ext.3) gave rise to a formal First Information Report (F.I.R) being Guraru P.S.Case No.33 of 1992 registered under Sections 147, 148, 149, 302, 307, 342 of the Indian Penal Code and Section 27 of the Arms Act.

5. After investigation police submitted a charge-sheet, cognizance was taken and the records were committed to the Court of Sessions for trial. The accused pleaded not guilty and claimed to be tried. The defence case before the



learned trial Court was that the accused persons have been falsely implicated in this case due to enmity. The defence alleged that the witnesses examined in the case are related with the informant and they are on inimical term to the accused persons. The defence also pleaded that the motive has not been proved in the present case, the original place of occurrence have been changed and the evidence of the witnesses are full of contradictions on vital points. The defence also brought on record a certified copy of judgment of Sessions Trial No.48/94/50389 (Ext.A) to show that there has been previous enmity between the prosecution party and the accused persons. It was thus pleaded that the accused persons are innocent and deserve to be acquitted.

6. In course of trial altogether 8 witnesses were examined on behalf of the prosecution. P.W.1, Musafir Yadav and P.W.3 Kapildeo Yadav are related to each other as brother-in-law. Both of them deposed as eye-witnesses. They claimed that they had gone to the market (Bazar) on the date of occurrence on 01.11.1992 and at about 06:00 P.M while returning from the Bazar when they reached near Gauria Asthan they heard three sounds of gun fire and had seen the accused persons running towards South with country made revolvers in their hands. They rushed to the place of occurrence and found Devanand Yadav lying injured and bleeding injuries on his person. In their cross-examination they claimed that they identified the accused persons by face and voice. It is however found from the evidence of Ram Subhag Singh, the Officer-in-Charge of the Police Station (P.W.8) that these witnesses had not stated before police that they had identified the accused persons by face also. The learned Trial Court did not take this contradiction with much relevance as according to the learned trial Court P.W.1 is co-villager and it was not difficult for him to identify the accused persons by voice or by face, therefore, even if he did not state before the police



that he identified the accused persons by face, it was a mere omission and cannot be taken as a contradictions.

7. So far as, P.W.3 is concerned he has stated in his cross-examination that no villager came to the place of occurrence after his arrival, he has also admitted in para-3 of his deposition that he did not name accused Ravindra Yadav and Naresh Yadav before police. The Investigating Officer (P.W.8) has in course of his cross-examination also stated that P.W.1 did not name accused Surendra Yadav before him.

8. P.W.1 in his cross-examination has stated that he heard the sound of fire and had seen the accused persons fleeing away towards south. He has stated that police had not recorded his statement. He had gone to the place of occurrence with police. Statement of Brajesh Yadav (P.W.6) and Kapildeo Yadav (P.W.3) have also stated that they had made statement but their statement was not recorded by the police. According to P.W.1 they had gone to the police station with the dead body where their statements were recorded. It is stated that the statement of Brajesh Yadav was first recorded and thereafter his statement was recorded and then the statement of Kapil Deo Yadav (P.W.3) was recorded. P.W.1 has stated that their signatures were also taken. He has further stated that thereafter about four days he had met the police. He has proved his signature on the inquest report (Ext.1) and the seizure list of the blood stained earth (Ext.1/1).

9. P.W.2 Tulsi Prasad is the brother of the deceased of this case. He has stated that at about 06:00 P.M on 01.11.1992 he was in his house and on hearing halla he had gone to the place of occurrence and had seen that Devanand Yadav had suffered pellet injury. P.W.2 also claimed that he had seen the accused persons fleeing away with pistols in their hands. He has proved his signature on the inquest report and the seizure list which were proved as Ext.1/2



and 1/3 respectively. In his cross-examination he has stated that Jethu Yadav was his Grandfather, he had three sons one of the sons Karmuni Yadav had four sons namely Mosafir Yadav (P.W.1), Pundeo Yadav (not examined) and Devanand Yadav (deceased). Brajesh Yadav (informant) is the son of P.W. 2, Pramod Yadav (P.W.5) is the son of Pundeo Yadav. He has further stated that the accused persons namely Suresh Yadav and Naresh Yadav are from the family of Chanarik Yadav and the other accused are from the family of Dega Mahto. He has admitted that his brother was in jail but do not know that he was in jail in connection with dacoity and murder cases. In this cross-examination P.W.2 has further reiterated that while he was sitting at his house he had heard the sound of firing and on hearing the said sound he had gone to the place of occurrence. P.W.3 has stated that Devanand Yadav (deceased) is the younger brother of his Bahnoi. In cross-examination he has stated that his village is situated at a distance of one and half Kosh (approximately 3 Kms) from the place of occurrence. He had gone to Bazar but had had not made any purchase. He has further stated that he had seen the accused persons fleeing away when he came near Devanand Yadav (deceased) with his Bahnoi. He has further stated that after they reached there nobody came from the village. P.W.3 claimed that he along with P.W.1 had gone to police station and informed the Havaldar about the murder and had came back to the place of occurrence with police. Again with the dead body they had gone to the police station and had stayed their over the night. P.W.3 had stated that before police he had stated about identifying Ravindra Yadav and Naresh Yadav.

10. P.W.4 Samundri Devi is the wife of the deceased Devanand Yadav. She has stated that on the date of occurrence at about 12:00 Noon a quarrel had taken place with the accused persons on fixing the peg in the field and



the accused persons had threatened her husband. She has stated that when Brajesh Yadav (informant) returned home, he informed that uncle (chacha) has been killed and Naresh Yadav, Suresh Yadav, Lakhan Yadav, Badri Yadav, Surendra Yadav and Ravindra Yadav had committed murder. In paragraph no.3 of her cross-examination this witness has stated that she has only one daughter. Her husband had helped Brajesh Yadav during marriage of his sister by giving Rs.15000-20000 which Brajesh Yadav had not returned till date. She has further stated in her cross-examination that Brajesh Yadav had submitted an application posing himself as son of Devanand Yadav (deceased) for appointment on compassionate ground. She has stated that she had written on the application that Brajesh Yadav is her son. In paragraph 4 of her cross-examination she has stated that when Brajesh Yadav told her that uncle has been killed, at that time she had heard the sound of gun firing and she along with Brajesh Yadav had gone to the place where the dead body was lying. She has further stated that police had not enquired from her. She has further stated that Pramod (P.W.5) did not want appointment in place of her husband. She denied the suggestion that her husband has been killed by Brajesh Yadav(P.W.6).

11. Pramod Yadav (P.W.5) is the nephew of Devanand Yadav (deceased). He stated that he along with Brajesh Yadav was returning by bicycle from Guraru Bajar. According to him his uncle Devanand Yadav was coming from behind on foot. This witness claims to have seen the occurrence. According to him Suresh Yadav ordered to kill Devanand Yadav on which Badri Yadav fired on his chest, Suresh Yadav fired on the Kanpatti and Lakhan Yadav fired on the head of the deceased. In his cross-examination this witness has stated that he is student of Class X. He had gone to jail in the firing case which was lodged by the nephew of accused Lakhan Yadav. He has further stated that his



father was in jail for over one year in connection with the case of dacoity and murder. He has stated that before the police he had disclosed about the firing on the chest, head and kanpatti by the aforesaid three accused persons.

12. Brajesh Yadav (P.W.6) is the informant of this case who has reiterated his version of the Fardbeyan. He has stated that on Hulla, Tulsi Yadav, Musafir Yadav and Kapil Yadav came their. In his examination-in-chief he has made some improvement by saying that that he along with Pramod Yadav (P.W.5) was returning by bicycle to his house. He has stated that immediately after the occurrence he had gone to the police station, Daroga came to the place of occurrence where his statement was recorded and after recording his statement the same was read over to him which he found correct and put his signature. He has proved the signature as Ext.1. He has also proved the signature of Musafir Yadav as Exts.1/4 and 1/5 respectively.

13. The statement of P.W.6 that he was returning with Pramod Yadav (P.W.5) is in support of the statement of P.W.5. In his Fardbeyan he has stated that he was returning by bicycle and after the accused persons fired on the deceased he raised Hulla whereupon Pramod Yadav came running and caught Badri Yadav but Badri Yadav put him down and fled away. Further if the statement of P.W.4 Samudri Devi (wife of the deceased) is read together with the examination-in-chief of P.W.6, it may be noticed that according to P.W.4, Brajesh Yadav (informant) came to the house in evening and told her that Chacha has been murdered. In her cross-examination she has stated that she had gone with Brajesh Yadav (P.W.6) to the place where the dead body of her husband was lying. According to P.W.6 he had immediately gone to the police station and had come with the Daroga to the place of occurrence and thereafter, his Fardbeyan was recorded at the place of occurrence. If the statement of the informant along



with the statement of all other witnesses are read, some contradictions may be noticed. P.W.6 in Paragraph-6 of his cross-examination has given the distance of his village from Guraru Bajar, according to him his village is situated at a distance of one mile, in Paragraph-7 of his cross-examination he has stated that the accused persons neither caught him nor fired on him. He has further stated that they did not say anything to him. He has further stated that at a distance of about 25 yards away from Gauria Asthan he stopped his bi-cycle and was waiting for Devanand Yadav (deceased). He has denied to have got recorded in his Fardbeyan that when he reached near Gauria Asthan, all the accused persons came out from the paddy field and wanted to catch him. He has further stated in his cross-examination in Paragraph-7 that accused Suresh Yadav left from the south whereas, other accused persons went towards north. He has also stated that till that time he had not raised any Hulla and after the murder was committed he raised Hulla. In Paragraph 8 of his cross-examination, P.W.6 has stated that he had seen the occurrence from a distance of 25 yards, however, he cannot say the distance from which the persons who was firing was standing. He has further stated that initially nobody came from the village, he left the vegetable there itself and went to the police station on foot alone. After 10 to 15 minutes Daroga left from police station and came back to police station with the dead body. He has stated that for the whole night all of them were at the police station itself. He has stated that at about 03:00 P.M in night he came to Gaya by Palamu Express and returned next night at 10:00 P.M, he denied to have applied for appointment declaring himself son of Devanand Yadav. In Paragraph-9 this witness has stated that Pun Dev is his uncle, he is in jail and he was not aware that in the case in which Pun Dev is in jail, accused Lakhon Yadav is a witness.

14. Dr. Kapil Dev Prasad (P.W.7) had conducted the postmortem



on the dead body of the deceased on 02.11.1992. He has found three injuries, all the injuries were ante mortem and caused by firearm. He has proved the postmortem report as (Ext.2). According to him injury no.1 and 2 were caused from close range.

15. Ram Subhag Sing (P.W.9) was the Officer-in-Charge of the Guraru Police Station who has stated that at about 07:30 P.M on information about the murder he had taken the statement of Brajesh Yadav at the place of occurrence. He has stated that the Fardbeyan was recorded in presence of Musafir Yadav(P.W.1) and Tulsi Yadav (P.W.2) which was read over to the informant and after finding the same correct he had put his signature thereon. The Fardbeyan of the informant has been marked as Ext.3. He has proved the formal F.I.R which was recorded in his writing and signature as Ext.4.

16. This witness has narrated the place of occurrence. According to him the place of occurrence is a Kachi road connecting Guraru to Badaul. From the place of occurrence Badaul village is situated at a distance of 200 meter towards east. Guraru Bazar is situated at a distance of 500 meter towards north and west. The road is about 12 foot in width. Near the place of occurrence towards south there is paddy field of Chulhan Yadav and towards the north side there is a field of Sukhari Yadav. At the place of occurrence P.W.8 found that the dead body of the deceased was lying. There was bleeding wound of pellet on the chest which had an exit wound on the back. He found the half pellet of rifle in the left side of the Kanpatti which was bleeding, there was sign of firearm injury in the left eye and in the right side of the head which according to P.W.8 looked like the injuries caused by country made pistols. He found the blood stained clothes and earth. He had prepared the inquest report in presence of Tulsi Yadav and Musafir Yadav which is marked as Ext.5. The blood stain soil was seized, a



seizure list was prepared and proved in course of trial as Ext.6. In Paragraph-4 of his cross-examination he has stated that the wife of the deceased had come to him and told him about her appointment. In Paragraph-5 of his cross-examination he has stated that he had been out for patrolling duty when he heard about the murder and came to the place of occurrence. He has clearly stated that Brajesh Yadav or any other witness had not gone to the police station to inform. He has recorded that the statement of Brajesh Yadav was recorded at the place of occurrence in village Badauna Gaon. In Paragraph-6 of his cross-examination he has stated that in the paddy field he had not found any trampling mark. He had visited Plot No.101, Khata No.18, measuring area 24 decimal, inspected the said place but did not find any sign of fixing a peg or uprooting of the peg in the said field.

17. In Paragraph 7 of his cross-examination this witness has stated that Musafir Yadav (P.W.1) had not told him that he had identified the accused by face, however, he had said that he had identified the accused by voice. P.W.1 had not taken the name of Surendra Yadav and Naresh Yadav. P.W.1 had not told him that he had heard the sound of firing. Regarding Tulsi Yadav (P.W.2), P.W.8 has stated that this witness had not taken the name of the accused Lakhan Yadav. He had not told P.W.8 that on hearing the sound of firing he had gone to the place of occurrence. P.W.2 had told P.W.8 that on getting information about the murder of Devanand Yadav he had gone to the place of occurrence. P.W.8 has further stated that the witness Kapil Deo Yadav (P.W.3) had not taken the name of Naresh Yadav and Ravindra Yadav. He had not said that he had seen the accused persons committing murder. P.W.8 has further stated that witness Pramod Yadav (P.W.5) had not told him that Badri Yadav had fired on chest, Lakhan Yadav on head and Surendra Yadav on Kanpatti of the deceased. Witness Pramod Yadav (P.W.5) had also not said that the deceased Devendra Yadav was



surrounded at Gauria Asthan.

18. In course of their statement under Section 313 Cr.P.C the accused persons were asked as to whether they had heard the depositions of the witnesses, the accused persons said 'yes'. Thereafter, it appears that another question was placed saying that, according to the prosecution, they had made unlawful assembly and caused death of Devanand Yadav by firing. The accused persons denied all the allegations.

19. The learned trial Court has upon analysis held that the accused persons had committed offences for which they were charged. The learned trial Court held that according to the evidence of P.Ws 2,6 and 8, Exts.5 and 6 were prepared at the place of occurrence. The trial Court did not give any importance to the evidence of P.W.1 made in Paragraph-5 of the cross-examination stating that Exts.5 and 6 were prepared at the police station. The trial Court also refused to attach any importance to the contradictions which were noticed in the statement of the informant and the Investigating Officer. He has rejected the contention of the defence that the inquest report and the F.I.R are not genuine piece of documents as they were at the time and place mentioned therein. The defence had pointed out the contradictions in the evidence of P.Ws.3, 6 and 8.

20. Learned counsel representing the appellants submitted before us that the learned trial Court has failed to appreciate the material contradictions on the vital issues in the evidence of the prosecution witnesses. It is stated that at first instance there are material contradictions in the Fardbeyan and his own examination-in-chief of the informant (P.W.6). It is stated that in the Fardbeyan the informant has stated that Pramod Yadav (P.W.5) came at the place of occurrence after the informant raised Halla but in his examination-in-chief in order to support the evidence of Pramod Yadav (P.W.5) the informant committed



a material contradiction in his statement by stating that Pramod Yadav and he were together on bi-cycle. It is also pointed out that according to the informant (P.W.6) after the murder was committed he raised Hulla and then leaving his vegetable there he went immediately to the police station and came back with the Daroga to the place of occurrence on foot where his statement was recorded whereas, according to Musafir Yadav (P.W.1) he along with Brajesh Yadav (P.W.6) and Kapil Deo Yadav (P.W.3) had gone to the police station which fact has been denied by P.W.8 in his evidence. It is submitted that according to P.W.4 Samudri Devi, Brajesh Yadav (P.W.6) had came to the house and told her about the murder of Chacha she had heard the sound of firing at the same time when P.W.6 was informing him about murder and then she had gone to the dead body along with Brajesh Yadav (P.W.6) but this fact is in conflict fact of the statement of Brajesh Yadav (P.W.6) who claims that he had immediately gone to the police station on foot, came back with Daroga and again went to the police station with the dead body and remained there. Brajesh Yadav has stated that he had left for Gaya by Palamu Express and returned next night at 10:00 P.M. It is also submitted that according to Brajesh Yadav he had left the vegetable at the place of occurrence and had gone to the police station running from there but when the police came no vegetable could be seized from the place of occurrence. It is submitted that in fact the whole manner of occurrence as narrated by the informant and witnesses are false and not proved from their evidence. It is also submitted that all the witnesses are brother and nephews who are sons of own brother of the deceased, wife of the deceased and one of the relatives (brother-in-law) of one of the witnesses who are partisan witnesses and had been inimical to the appellants.

21. On the other hand learned A.P.P representing the State



submits that there is no material contradictions in the evidence of the prosecution witnesses and the learned trial Court has rightly appreciated the entire evidence and convicted the accused-appellants.

22. Having gone through the entire evidence available on the record and upon taking note of the submissions and defence on behalf of the appellants and the learned A.P.P for the State I find that the manner of occurrence as narrated by the informant (P.W.6) could not be proved by the prosecution beyond all reasonable doubts. There are not only material contradictions in the statement of the informant (P.W.6) in his Fardbeyan and the statement made in course of trial but even as the evidence of other witnesses brought on behalf of the prosecution are not consistent and they fail to instill confidence in placing reliance upon those evidence for the purpose of conviction under Section 302 of the Indian Penal Code or for the purpose of proving the offences for which the appellants have been charged in this case.

23. I have noticed that in his Fardbeyan the informant (P.W.6) has stated that when he left Guraru Bazar at about 05:30 P.M, he was on a bicycle and his uncle (deceased) was coming from behind, according to him as he could have reached about 200 yards near the electric tower on road, from the paddy field, five accused persons came out, later on he added that apart from those five accused persons Ravindra Yadav was also there. He made statement in his Fardbeyan that the accused persons wanted to get hold of him and lift him but he fled away with his bicycle, in course of his cross-examination when confronted the informant (P.W.6) has stated that he had not got recorded in his Fardbeyan that when he reached near Gauria Asthan all the accused persons came out of the paddy field and wanted to catch hold of him but he fled away. P.W.8 who was the Officer-in-Charge of the Guraru Police Station had visited the place of occurrence and has



described the place of occurrence as a 'Kachi road' connecting Guraru to Badaul. The place of occurrence is situated at a distance of 200 meters from the village. He has not found any trampling mark in the paddy field of Cholhan Yadav which is situated south to the place of occurrence. Thus, what is recorded in the Fardbeyan of the informant after reading out to him in presence of two witnesses has been denied by the informant himself in course of his evidence.

24. According to the Fardbeyan he was at a distance of 25-30 yards only from the place where the deceased had been surrounded and caught by the accused persons, in his evidence he has stated that the accused persons did not tell him anything and they did not either tried to catch him or to fire upon him. This seems to be highly doubtful and improbable because according to the informant he had uprooted the peg which was fixed by one of the accused persons in the disputed field. He was a party to the quarrel and thereafter, Havaladar Devanand Yadav had a quarrel with the accused persons. It is difficult to believe that the informant will be allowed to see the occurrence from a distance of 25-30 yards only that too on the road where there was nothing to conceal himself.

25. Further in his Fardbeyan the informant claimed that on Hulla raised by him Pramod Yadav (P.W.5) came there, it means Pramod Yadav was in the vicinity, may be in the village which was situated at a distance of 200 yards only from the place of occurrence but in course of his evidence informant (P.W.6) in order to support the evidence of P.W.5 the informant (P.W.6) improved upon his own Fardbeyan and said that Pramod Yadav was with him on bicycle.

26. To say that Pramod Yadav was with him on bicycle is in complete conflict with the statement made by the informant in his Fardbeyan where he said that Pramod Yadav came running and caught Badri Yadav but Badri Yadav fled away by putting him down. The informant claimed in his



evidence that he had alone gone to the police station on foot to inform the Daroga about occurrence but when the Officer-in-Charge of the police station (P.W.8) deposed he has stated that he was on patrolling duty and on hearing about commission of murder he came to the place of occurrence and recorded the Fardbeyan of the informant in presence of two witnesses. If the statement of P.W.6 is taken into consideration, a question would arise if he was on bicycle, why did he go to the police station running, further according to the informant he had left the vegetable at the place of occurrence itself while running to the police station but the Officer-in-Charge of the police station (P.W.8) did not find any vegetable and no seizure list of vegetable has been prepared. The bicycle on which the informant was riding was also not present on the place of occurrence. In his cross-examination in Paragraph-6, P.W.6 had stated that the distance between Guraru Bazar to his village would be one mile. According to him the occurrence took place while returning from Guraru Bazar at about 05:30 P.M. It was month of November, therefore, from any estimate in covering a distance of approximately one mile at least another half an hour will be taken and by that time darkness will set-on due to early sun set. From the Fardbeyan it will appear that according to informant when he reached near Gauria Asthan Electric Tower, the accused persons came out from the paddy field but according to P.W.8 the place of occurrence is about 200 meter south and east to village Badaul. There is no mention about Electric Tower at the place of occurrence. The Officer-in-Charge (P.W.8) has clearly stated that no trampling mark was found in the paddy field situated near the place of occurrence. This creates doubt about the manner of occurrence narrated by the informant.

27. I have noticed the material contradictions in the statement of other prosecution witnesses also, according to P.W.1 he was also coming from



Guraru Bazar with Kail Deo Yadav (P.W.3) ahead of them from a distance of 200 yards they heard sounds of three firing. In his examination-in-chief, P.W.1 claimed that he had seen the accused persons were going ahead and all of them were lashed with country made revolver. P.W.1 claimed that he had returned and gone to the police station and came back with the Officer-in-Charge of the police station. On the one hand informant (P.W.6) claims that he had alone went to the police station and at the same time P.W.1 claims that he had gone to the police station and came back with police whereas, the Officer-in-Charge (P.W.8) says in this evidence that he was on patrolling duty and on hearing of commission of murder he had reached the place of occurrence. These circumstances are clearly indicating the contradictions in the evidence of the prosecution witnesses. Further P.W.1 has claimed in his cross-examination that some darkness had prevailed and he had identified the accused persons by voice. According to him Brajesh Yadav and Kapil Deo Yadav had also made statement before police but their statements were not recorded by police, all the three persons came back with police but their statements were not recorded by police at the place of occurrence rather when they again went to the police station with the dead body then at the police station their statements were recorded. This part of the evidence is in complete contradiction with the statement of the informant Brajesh Yadav (P.W.6) who has stated that his statement was recorded at the place of occurrence. P.W.1 is also the grandson of Jethu Yadav, he and the informant as well as some other witnesses are from the family of Jethu Yadav has been admitted by him in his cross-examination in Paragraph 3.

28. The evidence of Tulsi Prasad (P.W.2) is also not trustworthy. According to him he had gone to the place of occurrence after hearing the sound of firing on the saying of the co-villagers that firing had taken place. He had gone



to the place of occurrence with some people and had seen about 15 to 20 people coming but he did not identify their name and village. P.W.3 Kapil Deo Yadav is the brother-in-law of the younger brother of the deceased whose village is situated at a distance of about 03 Kms from the place of occurrence. He claims to have gone to Bazar for purchasing but admits in his cross-examination that he had not made any purchase in the Bazar which throws serious doubt on his statement that he had gone to Bazar. He claims that he was returning with his brother-in-law on his request to his village. This witness has also stated that he along with his brother-in-law had gone to the police station running from there and informed Havaldar that Devanand had been murdered. He claims to have come back to the place of occurrence with police. Apparently, his evidence is in conflict with the statement of the informant (P.W.6) and also that of the evidence of the Officer-in-Charge (P.W.8). The evidence of Samudri Devi (P.W.4) is again not worthy reliable. She has stated that she had heard the sound of gun fire at the time when Brajesh Yadav told her that Chacha had been killed. She had gone to see the dead body with Brajesh Yadav. If her statement is read together with the evidence of Brajesh Yadav (P.W.6), according to Brajesh Yadav (P.W.6) after the murder was committed he had gone running to the police station and had come back with police and thereafter he had again gone to the police station with the dead body and he left for Gaya by Palamu Express and returned only on the next day at 10 O' clock in the night. In her corss-examination, P.W.4 says that police did not enquire from her but the Officer-in-Charge (P.W.8) says that she had not been seen near the dead body.

29. The evidence of Pramod Yadav (P.W.5) is again full of contradictions. He claims to be there with the informant on his bicycle. It appears that he has been introduced as a companion of P.W.6 in this case only at a belated



stage. In his cross-examination he has stated that he had gone to jail in the case lodged by Om Prakash who is nephew of accused Lakhan Yadav, therefore, the plea of the defence that it is a case of false implication due to prior enmity cannot be rejected out rightly. The Officer-in-Charge (P.W.8) is a material and independent witness of this case who has categorically stated in his cross-examination that witness Pramod Yadav had not told him that Badri Yadav had fired on his chest, Lakhand Yadav on his head and Surendra Yadav on his kanpatti. Witness Pramod Yadav (P.W.5) had not told to the Officer-in-Charge (P.W.8) that the deceased Devanand Yadav was surrounded at Gauria Asthan. The various paragraphs of the cross-examination of P.W.8 show that the prosecution witnesses have changed their version at various stages and have deposed with sole intention to implicate the appellants and get them punished in the present case.

30. The statement of the appellants recorded under Section 313 Cr.P.C has also been recorded in a most perfunctory manner by simply putting three questions to them without bringing to their notice the incriminating materials brought by the prosecution against them in course of trial. It appears that the learned trial Court has not given much importance to the material contradictions in the evidence of the prosecution witnesses which have been noted hereinabove.

31. In my opinion on the face of the material contradictions in prosecution evidence it would not be safe and proper to convict the appellants for the offences alleged against them and for which they were charged and tried. The appellants are able to create a dent in the prosecution evidence, thus have made themselves entitled to get acquitted giving them benefits of doubt.

32. In result, the impugned judgment of the learned trial Court is



hereby set-aside, the appellants are acquitted from all charges and discharged from the liability of their bail bonds.

33. The appeals are allowed.

(Rajeev Ranjan Prasad, J)

Rajendra Menon, CJ.- I Agree

(Rajendra Menon, CJ)

Arvind/R.R.Ojha

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