

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 1004 of 2016

Arising Out of PS. Case No.-83 Year-1993 Thana- Udakishanganj District- Madhepura

Md. Alam Khan son of Late Md. Tasir Resident of Village/Mouza-Laxmipur
Lalchand, Police Station Bihariganj, District-Madhepura

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with
Criminal Appeal (DB) No. 1034 of 2016

Arising Out of PS. Case No.-83 Year-1993 Thana- Udakishanganj District- Madhepura

Bimal Mahto son of Late Gulai Mahto, Resident of village/ Mouza-
Laxmipur Lalchand, Police Station Bihariganj, District- Madhepura

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with
Criminal Appeal (DB) No. 798 of 2016

Arising Out of PS. Case No.-83 Year-1993 Thana- Udakishanganj District- Madhepura

1. Kamo Mahto, son of Late Budan Mahto,
 2. Bhulo Mahto @ Bulu Mahto son of Late Shiban Mahto.
 3. Ram Mahto, son of Late Tetar Mahto,
 4. Matru Mahto, Son of Late Singheshwar Mahto,
- All are resident of Village/Mouza- Laxmipur Lalchand, Police
Station-Bihariganj, District- Madhepura

... .. Appellants

Versus

The State of Bihar

... .. Respondent

with
Criminal Appeal (DB) No. 925 of 2016

Arising Out of PS. Case No.-83 Year-1993 Thana- Udakishanganj District- Madhepura

Anandi Mahto Son of late Baldeo Mahto Resident of village/Mouza
Laxmipur Lalchand, Police station- Bihariganj, District Madhepura.



... .. Appellant
Versus
The State of Bihar
... .. Respondent

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with
Criminal Appeal (DB) No. 964 of 2016

Arising Out of PS. Case No.-83 Year-1993 Thana- Udakishanganj District- Madhepura

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1. Rajo Mahto Son of Late Kesho Mahto
2. Jagdish Chaudhary Son of Late Yugal Chaudhary
Both are resident of Mauza – Laxmipur Lalchand, Police Station – Bihariganj, District – Madhepura.
3. Chhote Lal Sah Son of Late Mahadeo Sah, Resident of Mauza – Uda Kishunganj, Police Station – Uda Kishunganj, District – Madhepura.

... .. Appellants
Versus
The State of Bihar
... .. Respondent

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with
Criminal Appeal (DB) No. 1009 of 2016

Arising Out of PS. Case No.-83 Year-1993 Thana- Udakishanganj District- Madhepura

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Domi Mahto Son of Late Pathru Mahto, Resident of Village/Mouza- Laxmipur Lalchand, Police Station Bihariganj, District- Madhepura.

... .. Appellant
Versus
The State of Bihar
... .. Respondent

Appearance :
(In Criminal Appeal (DB) No. 1004 of 2016)
(In Criminal Appeal (DB) No. 798 of 2016)
(In Criminal Appeal (DB) No. 925 of 2016)
(In Criminal Appeal (DB) No. 964 of 2016)
(In Criminal Appeal (DB) No. 1009 of 2016)
(In Criminal Appeal (DB) No. 1034 of 2016)

For the Appellants : (i) Mr. Baxi S.R.P. Sinha, Sr.Adv.
(ii) Mr. Viveka Nand Singh, Adv.
(iii) Mr. Vikram Deo Singh, Adv.
(iv) Mr. Aarsh Kumar, Adv.
(v) Mr. Yogendra Kumar, Adv.
(vi) Mr. M.K.Gautam, Adv.



- (vii) Mr. Ram Naresh Ray, Adv.
- (viii) Mr. Ramesh Kumar, Adv.
- (ix) Mr. Sanjay Kumar Singh, Adv.

For the State : Mr. Ajay Mishra, A.P.P.

For the Informant : Dr. Sanjay Kumar Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 16-02-2018

Since in all the aforesaid six appeals, appellants were tried in Udakishanganj P.S. Case No. 83 of 1993, corresponding to Sessions Trial No. 94 of 1995 and 94 of 1995(S), all the aforesaid appeals were heard together and are being disposed of by this common judgment.

2. Appellant Md. Alam Khan (in Cr. Appeal DB No. 1004/16), appellant (i) Kamo Mahto, (ii) Bhulo Mahto @ Bulo Mahto, (iii) Ram Mahto and (iv) Matru Mahto (in Cr. Appeal DB No. 798/16) and appellant (i) Rajo Mahto, (ii) Jagdish Chaudhary and (iii) Chhote Lal Sah (in Cr. Appeal DB No. 964/16) have been held guilty and convicted by judgment dated 23-07-2016 passed in Sessions Trial No. 94 of 1995 {arising out of Udakishunganj (Bihariganj) P.S. Case No. 83/1993} by Sri Mithilesh Kumar Dwivedi, learned Addl.



Sessions Judge Ist, Madhepura (hereinafter referred to as the 'Trial Judge') for commission of offence under Section 302/34 of the Indian Penal Code, 1860 (hereinafter referred to as the 'I.P.C.') and by order of sentence dated 26-07-2016, they have been directed to undergo rigorous imprisonment for life and fine of Rs. 5,000/- (five thousand) each. In default of payment of fine, they have been directed to undergo simple imprisonment for six months additionally, **whereas**, appellant Bimal Mahto (in Cr. Appeal DB No. 1034/16), appellant Anandi Mahto (in Cr. Appeal DB No. 925/16) and appellant Domi Mahto (in Cr. Appeal DB No. 1009/16) by judgment of conviction dated 27-08-2016 in Sessions Trial No. 94 of 1995(S) {arising out of Udakishunganj (Bihariganj) P.S. Case No. 83/1993} were convicted for commission of offence under Sections 302/34 of the I.P.C. and by order of sentence dated 29-08-2016, they were directed to undergo rigorous imprisonment for life with fine of Rs. 5,000/- (five thousand) each and in default of payment of fine, they have been directed to undergo simple imprisonment for six months additionally.



3. All the aforesaid appellants were tried together, however; by order dated 08-03-2016, the case of three appellants namely Bimal Mahto (in Cr. Appeal DB No. 1034/16), Anandi Mahto (in Cr. Appeal DB No. 925/16) and Domi Mahto (in Cr. Appeal DB No. 1009/16) was separated and case proceeded against remaining nine accused persons. After separation of the trial, the case of aforesaid three appellants was numbered as Sessions Trial No. 94(S) of 1995, **whereas**, case of remaining accused proceeded as Sessions Trial No. 94 of 1995. After separation of the case, the case was adjourned on number of dates for examination of the investigating officer and remaining witnesses, however; since on about nine dates thereafter the prosecution failed to produce witness, the prosecution evidence was closed on 28-03-2016 and thereafter, statement of nine accused persons was recorded under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.'). Since the defence claimed to examine its own witnesses, the case was fixed for defence evidence and thereafter, three defence witnesses were examined and lastly, D.W.3, after his evidence, was discharged on 22-06-2016 and the case was



fixed for argument. Thereafter, on 11-07-2016, argument was concluded and case was directed to be posted for judgment on 23-07-2016, on which date, the appellants -

1. **Md. Alam Khan (in Cr. Appeal DB No. 1004/16)**
2. **Kama Mahto (app.no.1 in Cr. Appeal DB No. 798/16)**
3. **Raja Mahto (app.no.1 in Cr. Appeal DB No. 964/16)**
4. **Bhulo Mahto @ Bulo Mahto (app.2 in Cr. App. DB No. 798/16)**
5. **Ram Mahto (app.no.3 in Cr. Appeal DB No. 798/16)**
6. **Jagdish Chaudhary (app.no.2 in Cr. Appeal DB No. 964/16)**
7. **Matru Mahto (app.no.4 in Cr. Appeal DB No. 798/16) and**
8. **Chhote Lal Sah (app.no.3 in Cr. Appeal DB No. 964/16)**

were held guilty and convicted for offence under Sections 302/34 of the I.P.C.. However, one of the accused namely Mukti Lal Mahto was acquitted from the charges and subsequently by order of sentence dated 26-07-2016, all the aforesaid convicted eight appellants were directed to undergo rigorous imprisonment for life with fine of Rs. 5,000/- (five thousand) each and in default, they were directed to undergo simple imprisonment for six months additionally. So far as three appellants i.e. Bimal Mahto (in Cr. Appeal DB No. 1034/16), Anandi Mahto (in Cr. Appeal DB No. 925/16) and Domi Mahto (in Cr. Appeal DB No. 1009/16) in Sessions Trial No. 94(S) of 1995 are concerned, they surrendered on 08-08-2016 and taken into custody. Thereafter, on



27-08-2016, they were held guilty and convicted for offence under Sections 302/34 of the I.P.C. and by order of sentence dated 29-08-2016, they were directed to undergo rigorous imprisonment for life with fine of Rs. 5,000/- (five thousand) each and in default, additionally they were directed to undergo simple imprisonment for six months.

4. Short fact of the case is that on 23-06-1993 at 17.30 hours in the evening (i.e. 5:30 PM), one Assistant Sub-Inspector of Police Pramod Ram of Bihariganj Police Station recorded *fardbeyan* of Kaushal Kishore Mahto (C.W.1) son of deceased Tetar Mahto at the door of deceased. In the *fardbeyan*, the informant disclosed that on the same date i.e. on 23-06-1993, the informant, his father (deceased) Tetar Mahto and his sister Birodhia Devi (C.W.2), after loading maize (भुदटा) on bullock cart from the field of his मालिक (landlord) Khurshid Khan of village Maniya More, police station – Naugachhia were returning to his house and while they reached near a पोखड़ (pond) adjacent to eastern चाप (low land), then from the two sides of maize field suddenly following accused variously armed with *dabiya*, *lathi*, *danda* etc. came out:



1. Bulo Mahto S/o Shiban Mahto
2. Maheshwar Mahto S/o Singheshwar Mahto
3. Kamo Mahto S/o Budan Mahto
4. Bimal Mahto S/o Gulai Mahto
5. Domi Mahto S/o Pathar Mahto
6. Arun Mahto S/o Chhote Lal Mahto
7. Ram Mahto S/o Tetar Mahto (not deceased)
8. Alam Khan S/o Md. Tasir
9. Matru Mahto S/o Singheshwar Mahto
10. Rajo Mahto S/o Kesho Mahto
11. Mukti Lal Mahto S/o Kamleshwari Mahto
12. Jagdish Chaudhary father's name not known
13. Anandi Mahto S/o Baldeo Mahto,

All 1 to 13 residents of village Laxmipur
Lalchandra, P.S. Bihariganj, District –
Madhepura.

14. Chhote Lal Sah S/o Mahadeo Sah,

Resident of village & P.S. Udakishanganj,
District – Madhepura.

They surrounded the cart and caught his father from the cart and dragged him inside maize field and started mutilating. After getting chance to flee, the informant with his sister, after leaving bullock cart, fled and after some distance, they started raising alarm. After hearing the alarm of informant, the persons, who were working in the nearby field namely;



Ram Khelawan Mahto (P.W.6) S/o Latan Mahto, Fucho Mahto (P.W.1) S/o Tetar Mahto (not deceased), Kamo Mahto (P.W.4) S/o Doli Mahto, Ram Vilash Mahto (P.W.2) S/o Mishri Mahto arrived there. Thereafter, all the accused persons fled away. After returning, the informant with all other persons saw that neck of his father was mutilated and his dead body was lying in pool of blood. The reason for the occurrence was explained that his father was looking after the land of his मालिक (land lord). Earlier also, accused persons had threatened to leave the land otherwise he will be done to death. It was further stated in *fardbeyan* that in respect of the said dispute, a proceeding under Section 107 of the Cr.P.C. was already going on in Kishanganj court and old animosity was also there. The informant claimed that due to old animosity, his father was done to death by slitting his neck. The *fardbeyan* was read over to him and after understanding the same, as correct, the informant put his signature.

5. On the basis of said *fardbeyan*, a formal F.I.R. was drawn, vide Udakishanganj (Bihariganj) P.S. Case No. 83 of 1993, for offence under Sections 302/34 of the I.P.C. on



23-06-1993 at 10:30 P.M. against following accused persons:-

<u>Sl.</u>	<u>Name of the appellant</u>	<u>Cr.Appeal (DB) No.</u>
1.	Bhulo Mahto @ Bulo Mahto	App.2 in 798/16
2.	Maheshwar Mahto	Absconder
3.	Kamo Mahto	App.1 in 798/16
4.	Bimal Mahto	App. in 1034/16
5.	Domi Mahto	App.in 1009/16
6.	Arun Mahto	Absconder
7.	Ram Mahto	App.3 in 798/16
8.	Md. Alam Khan	App. in 1004/16
9.	Matru Mahto	App.4 in 798/16
10.	Rajo Mahto	App.1 in 964/16
11.	Mukti Lal Mahto	Since acquitted
12.	Jagdish Chaudhary	App.2 in 964/16
13.	Anandi Mahto	App. in 925/16
14.	Chhote Lal Sah	App.3 in 964/16

6. After registering F.I.R., police investigated the case and thereafter, on 31-08-93 chargesheet was submitted against all the F.I.R. named accused persons showing two accused namely Maheshwar Mahto and Arun Mahto as absconder. After submission of chargesheet, on 16-09-93 the learned Addl. Chief Judicial Magistrate took cognizance of offence and after completion of formality under Section 207 of the Cr.P.C., order of commitment was passed on 05-08-95. It was received in the court of learned Sessions Judge, Madhepura on 14-08-95 and it was numbered as Sessions Trial No. 94 of 1995. In the case, since there were



number of accused persons, framing of charge was delayed and finally, on 20-06-2000, charge was jointly framed against all the accused persons for offence under Sections 302/34 of the I.P.C., which they pleaded not guilty and claimed to be tried. In the case, initially, to prove its case, on behalf of the prosecution six witnesses were examined, namely;

- 1. P.W.1 Fucho Mahto**
- 2. P.W.2 Ram Bilas Mahto**
- 3. P.W.3 Dev Narayan Yadav**
- 4. P.W.4 Kamo Mahto**
- 5. P.W.5 Jageshwar Mahto**
- 6. P.W.6 Ram Khelawan Mahto.**

Evidence of P.W.6 Ram Khelawan Mahto remained inconclusive and thereafter, on one way or the other, the case proceeded without any progress. However, subsequently it was noticed that P.W.6 Ram Khelawan Mahto died and as such, his cross-examination remained finally inconclusive. Thereafter, at the stage of defence, on behalf of the appellants in Sessions Trial No. 94 of 1995, three defence witnesses were also examined.

7. Before proceeding further, it is necessary to incorporate certain facts, which have been noticed from the



ordersheet of the court below. In the case after the occurrence, formal F.I.R. was lodged on 23-06-93 at 10:30 PM, vide Udakishunganj (Bihariganj) P.S. Case No. 83 of 1993, against 14 accused persons. The F.I.R. was received in the court of learned Addl. Chief Judicial Magistrate, Madhepura on 25-06-1993. At the same time, the police had produced one of the accused Matru Mahto (appellant no. 4 in Cr.Appeal DB No. 798/16), who was remanded to judicial custody. On 05-07-93, a prayer was made by the investigating agency for issuance of processes against accused persons and thereafter, on the next date i.e. on 06-07-93, 1. Bhulo Mahto @ Bulo Mahto (appellant no. 2 in Cr.Appeal DB No. 798/16), 2. Md. Alam Khan (appellant in Cr.Appeal DB No. 1004/16), 3. Jagdish Chaudhary (appellant no. 2 in Cr.Appeal DB No. 964/16), 4. Ram Mahto (appellant no. 3 in Cr.Appeal DB No. 798/16), 5. Maheshwar Mahto (who was shown absconder in the chargesheet), 6. Domi Mahto (appellant in Cr.Appeal DB No. 1009/16) and 7. Anandi Mahto (appellant no. 4 in Cr.Appeal DB No. 925/16) surrendered and they were remanded to the judicial custody. On 07-07-93, Kamo



Mahto (appellant no. 1 in Cr.Appeal DB No. 798/16) and Rajo Mahto (appellant no. 1 in Cr.Appeal DB No. 964/16) surrendered. Subsequently, on two dates i.e. on 03-08-93 and 16-08-93 accused Arun Mahto, who was shown as absconder in the chargesheet, and Chhote Lal Sah (appellant no. 3 in Cr.Appeal DB No. 964/16) respectively surrendered and they were remanded to the judicial custody. After completion of appearance and all formalities, by order dated 05-08-95, the learned court below directed for committal of the case, which was received in the court of learned Sessions Judge on 14-08-95 and it was numbered as Sessions Trial No. 94 of 1995. In the case, charges were framed against all accused persons on 20-06-2000 for offence under Sections 302/34 of the I.P.C. Thereafter, first prosecution witness i.e. Fucho Mahto (P.W.1) was examined on 05-08-00 and without any plausible reasons, recording of evidence was delayed since prosecution had not produced witnesses regularly. However, after about lapse of more than nine years, evidence of P.W.6 Ram Khelawan Mahto remained inconclusive. Thereafter, again trial was delayed and on number of dates, no witness was produced.



Thereafter, by order dated 17-06-2010, the learned Trial Judge directed for issuance of non-bailable warrant of arrest for securing evidence of informant and investigating officer, which was issued on 02-07-2010. However, for about one year from the prosecution side, no step was taken for producing witnesses. Order dated 22-07-2011 of learned Trial Judge reflects the lethargic approach of the prosecution. The learned Trial Judge recorded in the ordersheet that repeatedly after issuance of summons, non-bailable warrant of arrest against witnesses, prosecution failed to produce witnesses and as such, as a last indulgence, the matter was deferred. However, on the same date, the learned Trial Judge marked the *post-mortem* examination report and inquest report, which were marked as **Ext. 2** and **2/A** respectively, however; those documents were exhibited with objection. Subsequently, on 01.12.11, accused persons were directed to remain present physically in court for recording statement and date was fixed to 15-12-11, on which, statement under Section 313 of the Cr.P.C. was recorded in respect of accused Chhote Lal Sah (App.3 in Cr.Appeal DB No. 964/16), Bhulo Mahto @ Bulu Mahto



(App.2 in Cr.Appeal DB No. 798/16), Md. Alam Khan (App. in Cr.Appeal DB No. 1004/16) and Bimal Mahto (App. in Cr.Appeal DB No. 1034/16) and finally, up-to 02-03-2012, statement under Section 313 of the Cr.P.C. of remaining all the accused persons was recorded. Only one accused did not appear and as such, by order dated 02-07-2012, the bail-bond of Arun Mahto (who was shown as absconder in the chargesheet) was cancelled and non-bailable warrant of arrest was issued against him. Thereafter, on one reason or the other, the matter was again deferred and thereafter, the case was fixed for defence evidence and since no defence witness was produced, the case was closed and by order dated 09-01-2015, the case was directed to be posted 'for argument'. On 22-01-2015, after hearing argument, judgment was reserved, however; subsequently the matter was again posted for argument and finally, on 15-04-2015, the case was re-opened by exercising its power under Section 311 of the Cr.P.C. The learned Trial Judge directed to issue letter to the Superintendent of Police for production of investigating officer, doctor and informant and case was fixed for evidence. Since no witnesses were



produced on 24-06-15, non-bailable warrant of arrest was directed to be issued against the witness Ram Khelawan Mahto (P.W.6), whose cross-examination was inconclusive and other witnesses. On 01-07-2015, the informant Kaushal Kishore Mahto (C.W.1) appeared, he was examined and finally, on 03-07-2015, after cross-examination, he was discharged. Thereafter, C.W.2 Birodhia Devi (daughter of deceased and sister of the informant) and C.W.3 Dr. Jang Bahadur Singh, who conducted *post-mortem* examination on the dead body of the deceased, after evidence, were discharged on 05-08-2015 and 11-08-2015 respectively. Again non-bailable warrant of arrest was issued for remaining witnesses. Since after issuance of non-bailable warrant of arrest, no response was coming from the prosecution or the Superintendent of Police, as per order of the Presiding Officer, letter was sent to the Inspector General of Police, Darbhanga for evidence of investigating officer, however; neither the investigating officer appeared nor any response was received. In the meanwhile, the case proceeded against nine accused persons and on 30-05-2016, again statement of nine accused persons under Section 313



of the Cr.P.C. was recorded and case was fixed for defence evidence. Thereafter, by 22-06-2016, after examination of three defence witnesses, namely; Gopal Mishra (D.W.1), Upendra Mahto (D.W.2) and Ram Mahto (D.W.3), the defence evidence was closed and the case was fixed for argument, which was concluded and finally, on 23-07-2016, eight aforesaid appellants were held guilty and convicted, whereas, one accused namely Mukti Lal Mahto was acquitted. On 26-07-2016, order of sentence was passed in respect of convicted eight accused persons, who are appellants.

8. In respect of case of three appellants namely Bimal Mahto (app. in Cr.Appeal DB No. 1034/16), Domi Mahto (app. in Cr.Appeal DB No. 1009/16) and Anandi Mahto (app. in Cr.Appeal DB No. 925/16), after their case was separated, it was numbered as Sessions Trial No. 94(S) of 1995. After their case was separated in Sessions Trial No. 94(S) of 1995, on 08-08-2016, three appellants namely Bimal Mahto (app. in Cr.Appeal DB No. 1034/16), Domi Mahto (app. in Cr.Appeal DB No. 1009/16) and Anandi Mahto (app. in Cr.Appeal DB No. 925/16) surrendered and



they were remanded to judicial custody. Thereafter, for the first time, on 22-08-2016, they were produced from the jail and next date was fixed for argument to 23-08-2016 and finally, argument concluded on 24-08-2016 and the case was fixed to 27-08-2016 for judgment, on which date, judgment of conviction of three appellants namely Bimal Mahto (app. in Cr.Appeal DB No. 1034/16), Domi Mahto (app. in Cr.Appeal DB No. 1009/16) and Anandi Mahto (app. in Cr.Appeal DB No. 925/16) was passed and they were convicted under Section 302/34 of the I.P.C. and thereafter, on 29-08-2016, judgment of sentence was passed and they were directed to undergo rigorous imprisonment for life with fine of Rs. 5,000/- (five thousand) each and in default of payment of fine, they were directed to undergo imprisonment for six months additionally.

9. After placing entire evidence, Sri Baxi S.R.P.Sinha, learned senior counsel assisted by Sri Yogendra Kumar, learned counsel for the appellant in Cr. Appeal DB No. 1004/16 has argued that the entire prosecution case is not sustainable, in view of absence of evidence of the investigating officer. He submits that during trial, each and



every step was taken for securing attendance of the investigating officer, but without any explanation, the prosecution did not produce the investigating officer for evidence. According to Sri Sinha, learned senior counsel, in absence of the investigating officer, the prosecution has miserably failed to establish the place of occurrence. By way of referring to **Ext. 2/A** i.e. inquest report, he submits that though the said inquest report was got exhibited, without examination of any of the witness on the point of inquest report, on perusal of the inquest report i.e. **Ext. 2/A**, it is evident that inquest report in respect of recovery of the dead body was prepared at the door of the deceased, whereas, it was case of prosecution that the deceased was done to death in a maize field. He further submits that in absence of investigating officer, this fact has not come on record as to whether at the place of occurrence, the investigating officer had noticed any blood mark or any seizure list has been brought on record during the trial. By way of referring to evidence of witnesses, he has argued that their evidence is not reliable, since they have tried to develop a story during evidence. He submits that informant,



who was examined as C.W.1, has developed a story during his evidence that he had seen as to which accused gave *dabiya* blow on which part of the deceased, whereas, in the *fardbeyan*, he himself had stated that the accused persons had dragged the deceased to the maize field and maize crop was admittedly having height of more than the height of a person. He submits that in the *fardbeyan*, the informant had stated that after the accused persons dragged his father to the maize field, he fled from the place of occurrence and started raising alarm, thereafter, some of the villagers arrived there, only then, accused persons fled. He submits that there is complete inconsistency in the evidence during the examination of C.W.1/informant and the fact disclosed in the *fardbeyan*. Sri Baxi S.R.P.Sinha, learned senior counsel has also argued that in absence of evidence of investigating officer, the defence case has seriously been prejudiced, since in respect of witnesses, who had deposed against their previous statement recorded under Section 161 of the Cr.P.C., the attention of the investigating officer could not be drawn by way of referring to the case diary during the trial. Learned senior counsel has further argued that neither



in the case, investigating officer was examined nor certain relevant portion of the case diary was got exhibited and as such, non-availability of the case diary on record has further prejudiced the case of the defence. In sum and substance, it has been argued that due to village politics in a case, in which, deceased was done to death at a different place, a story was built up, as if, witnesses had seen an occurrence, which had taken place in their presence. Accordingly, it has been argued that the prosecution has not been able to prove its case beyond all reasonable doubt and as such, judgment of conviction and sentence is liable to be set aside.

10. Sri Vikram Deo Singh, learned counsel assisted by Sri Sanjay Kumar Singh, learned counsel for the appellant in Cr.Appeal DB No. 1034/16, Cr.Appeal DB No. 798/16, Cr.Appeal DB No. 925/16 and Cr.Appeal DB No. 1009/16 has argued that prosecution has not established its case beyond all reasonable doubt, particularly; in view of the fact that though, it was case of the prosecution that altogether 14 accused persons had dragged the deceased from bullock-cart to the maize field and thereafter, he was mutilated in the maize field, during trial, nothing has been brought on record



as to whether in the maize field, trampling of maize crop was noticed or even blood or blood mark has been found at the place of occurrence nor any seizure list was prepared to show recovery of blood soaked soil. He submits that in normal course, in such situation, there was every possibility of noticing trampling of maize crop and huge blood at the place of occurrence itself. In absence of examination of the investigating officer, the defence was prevented from asking such question to the investigating officer as to whether such facts were noticed by the investigating officer at the place of occurrence or not. He further submits that injuries found on the person of the deceased during *post-mortem* examination also does not corroborate the prosecution story. By way of referring to **Ext. 2** i.e. *post-mortem* examination report, he submits that the doctor (C.W.3) had noticed only incised wound on the person of the deceased and no other injury mark on the person of the deceased. He submits that once, it was a case of the prosecution that deceased was forcibly dragged by about 14 accused persons from cart to maize field, there was every possibility of finding at least scratches on the person of the deceased and non-finding of any such



injury, save and except incised injury, suggests that the manner of occurrence has not been proved by the prosecution. Similarly, nothing has been mentioned by the prosecution as to whether at the place of occurrence, any blood mark was noticed or any seizure list was brought on record. He further submits that the prosecution story is also not believable that a sitting mukhiya was doing agriculture work and सिपाहीगिरी (Muscleman) of one of the landlord and he himself, after loading the maize crops of his part, was moving on a bullock-cart. This story also suggests some doubt on the prosecution case. So far as evidence of P.W.6 Ram Khelawan Mahto is concerned, it has been argued that without completion of his cross-examination, he remained absent on several dates and finally, it was noticed that the P.W.6 without completion of cross-examination died and as such, his evidence may not be looked into. Besides this, it has been argued that his evidence, even though, may not be looked into, but it suggests that the prosecution had tried to develop a story, which creates serious doubt on the prosecution case. It has been argued that P.W.6 in paragraph 2 of his evidence has stated the fact, which he had not stated



before the police during investigation. Accordingly, it has been argued that the appellants are entitled to be given benefit of doubt.

11. Sri Viveka Nand Singh, learned counsel for the appellants in Cr.Appeal DB No. 964/16, adopting the argument advanced by Sri Baxi S.R.P.Sinha, learned senior counsel and Sri Vikram Deo Singh, learned counsel in other appeals, submits that during the trial, there was only one independent witness i.e. P.W.6, whose evidence may not be looked into, since his cross-examination remained inconclusive. This witness too had not named the appellant no. 1 Rajo Mahto and appellant no. 2 Jagdish Chaudhary in Cr. Appeal (DB) No. 964/16. Similarly, C.W.1 has not deposed to show any role played by any of the three appellants in Cr. Appeal DB No. 964/16 in the occurrence. Accordingly, it has been argued that the impugned judgment of conviction and sentence is liable to be set aside.

12. Sri Ajay Mishra, learned Addl. Public Prosecutor as well as Dr. Sanjay Kumar Singh, learned counsel, who has appeared on behalf of the informant have opposed the appeals and it has been argued that in the case, evidence of



C.W.1/informant and C.W.2/Birodhiya Devi (daughter of the deceased) is very specific and no doubt can be raised on their evidence. It has been argued that it was a case under Sections 302/34 of the I.P.C. and since the prosecution had established its case that with intention to kill the deceased, the accused had concealed themselves in the maize field and immediately after arrival of the bullock-cart, they surrounded the cart and dragged the deceased to the field and thereafter, he was done to death, those materials were itself sufficient for holding them guilty and as such, the learned Trial Judge has rightly passed the judgment of conviction and sentence, which requires no interference.

13. Besides hearing learned counsel for the parties, we have also perused the evidences, both oral and documentary and after going through the same, *prima facie*, we are of the opinion that prosecution has not proved its case beyond all reasonable doubt. There is no explanation as to under what circumstances despite the fact that learned trial court had issued letters to the Superintendent of Police, no response was shown regarding non-production of at least investigating officer. It is further evident that repeatedly



learned Trial Judge had issued non-bailable warrant of arrest for securing attendance of witnesses, but all went in vein, then from the trial court, a letter was issued to the Inspector General of Police, Darbhanga for securing attendance of investigating officer, however; after lapse of several years and best effort, steps taken by trial court, the investigating officer had not come forward to depose in the case. Initially, even from the date of commencement of the trial, it is evident that prosecution had adopted complete dilatory approach. This was the reason that though P.W.1 was examined on 5th August, 2000, thereafter, about nine years was consumed for examination of prosecution witness, that too non-completion of the evidence of P.W.6 namely Ram Khelawan Mahto. His cross-examination remained inconclusive on 16-11-09 and thereafter, no plausible explanation was given by the prosecution for non-production of said witness, however; the fact that P.W.6 Ram Khelawan Mahto had already died has come in paragraph – 8 of cross-examination of C.W.1/informant. After the evidence of P.W.6, which remained inconclusive up-to 16-11-09, thereafter, no step was taken and finally,



prosecution evidence was closed and statement of accused under Section 313 of the Cr.P.C. was recorded and thereafter, the case was fixed for defence evidence. Finally, on 22-01-15, after conclusion of argument, judgment was reserved, but subsequently, the case was re-opened by the Trial Judge exercising power under Section 311 of the Cr.P.C. and Superintendent of Police was directed to produce investigating officer, doctor and informant. Again thereafter, stringent step was taken by the learned Trial Judge by way of issuance of non-bailable warrant of arrest. Then for the first time, on 01-07-2015, the informant Kaushal Kishore Mahto appeared and he was examined as C.W.1. In the case, P.W.1 Fucho Mahto, P.W.2 Ram Bilas Mahto, P.W.3 Dev Narayan Yadav and P.W.4 Kamo Mahto in the *fardbeyan* were shown to be witnesses, arrived at the place of occurrence after hearing alarm, had not supported the prosecution case and they were declared hostile. Those witnesses were shown as independent witnesses. However, those independent witnesses, since did not support the prosecution case, were declared hostile.



14. P.W.5 Jageshwar Mahto, who was none else but nephew of the deceased too has not supported the prosecution case and he was declared hostile. This witness too was introduced to support the prosecution case, as if, after the hearing हल्ला, he had gone to the place of occurrence and seen the accused persons assaulting the deceased.

15. P.W.6 Ram Khelawan Mahto was examined as independent witness. In his evidence, he stated that on the date and time of occurrence, he was in his field and plucking corn (भुट्टा). He deposed that Tetar Singh Mukhiya, after loading maize on his bullock-cart, was going to his residence. While he reached near पोखर (pond), then Alam Khan (app. in Cr.Appeal DB No. 1004/16), Bhulo Mahto @ Bulo Mahto (app.2 in Cr.Appeal DB No. 798/16), Chhote Lal Sah (app.3 in Cr.Appeal DB No. 964/16), Bimal Mahto (app. in Cr.Appeal DB No. 1034/16), Maheshwari Mahto (who was shown as absconder in the chargesheet) and 5-6 others started assaulting the deceased, then he went there and tried to save, then accused persons said to assault him also. However, after villagers assembled there, the accused



persons fled. Due to assault, Mukhiya had already died. He stated the reason for occurrence was that the deceased was doing work of सिपाही (Muscleman) of Khurshid Khan and deceased was being asked by the accused persons to leave सिपाहीगिरि (Musclemanship). He further stated that the name of accused persons, whose name he disclosed in the trial, he had disclosed to the police also and he denied that he had not disclosed the name of any of the accused before the police. He further stated that the deceased and informant were moving on bullock-cart loaded with maize. In paragraph 4 of his evidence, he accepted that the size of the maize crop was higher than the human being. In paragraph 6 of his evidence, he further stated that he remained near the dead body for about 2 ½ to 3 hours and the dead body was lying near the पोखर (pond). In paragraph 7, he further stated that the cart, which was loaded with the maize crop, had already gone to the village side by the ox without its driver. He further stated that before his arrival the ox has already taken the cart from the पोखर (pond) side. He denied the suggestion that there was any animosity in between Tetar (deceased) and accused persons on paper. He denied the



suggestion that the accused persons had lodged a case, in which, informant was one of the witness. He also denied the suggestion that there was any dispute regarding बटईदारी (Bataidari) However, his cross-examination remained inconclusive on 16-11-09 and thereafter, he never turned up for further cross-examination and as such, it would not be safe to place reliance on the basis of his evidence against the accused persons. However, to some extent, his evidence can be examined, if his evidence creates some doubt on the prosecution case. Accordingly, though against the defence, no inference can be drawn on the evidence of P.W.6, however; on examination of his evidence, it is clear that he stated that bullock-cart had already left the place of occurrence immediately after the occurrence.

16. After the evidence of P.W.6, the prosecution case was closed and statement of accused under Section 313 of the Cr.P.C. was recorded, however; subsequently case was re-opened and some of the witnesses were examined as court witness. The informant himself due to reasons best known to him had not earlier appeared before the court despite all processes were exhausted. Finally, after the case



was re-opened, on 2nd July, 2015, the informant Kaushal Kishore Mahto was examined as C.W.1. In his evidence, he stated that on 23-06-93 at about 4 and 5 hrs. in the evening, he with his deceased father Tetar Mahto and sister Birodhiya Devi, all three were returning on bullock-cart loaded with the maize, which was loaded from the field of his landlord Khurshid Khan, from village - Maniya More, P.S. Naugachhia, district – Bhagalpur. He disclosed that the said maize crop was of his share from the बटईदारी (Bataidari) from the landlord. His father was driving the bullock-cart and he with his sister Birodhiya Devi were going on foot following the said bullock-cart. While the bullock-cart reached near the eastern side of pond of one Shyam Sundar Jha, suddenly Bhulo Mahto (app.2 in Cr.Appeal DB No. 798/16), Maheshwari Mahto (not examined), Kamo Mahto (app.1 in Cr.Appeal DB No. 798/16), Matru Mahto (app.4 in Cr.Appeal DB No. 798/16), Alam Khan (app. in Cr.Appeal DB No. 1004/16), Anandi Mahto (app. in Cr.Appeal DB No. 925/16), Domi Mahto (app. in Cr.Appeal DB No. 1009/16), Mukti Lal Mahto (acquitted), Chhote Lal Sah (app.3 in Cr.Appeal DB No. 964/16), Rajo Mahto



(app.1 in Cr.Appeal DB No. 964/16), Jagdish Chaudhary (app.2 in Cr.Appeal DB No. 964/16), Arun Mahto (shown absconder in the chargesheet), Bimal Mahto (app. in Cr.Appeal DB No. 1034/16) carrying *lathi*, *danda* and *dabiya* surrounded bullock-cart and by catching hold of his father Domi Mahto (app. in Cr.Appeal DB No. 1009/16) mutilated head of his father by means of दबिया, whereafter, blood started oozing out. He claimed that entire occurrence was seen by him and his sister Birodhiya Devi. In paragraph – 2, he further stated that Alam Khan (app. in Cr.Appeal DB No. 1004/16) by means of दबिया started mutilating neck of his father, whereby neck of his father was mutilated and blood started coming out. In paragraph 3 of his evidence, he stated that Bimal Mahto (app. in Cr.Appeal DB No. 1034/16) by means of *dabiya* started mutilating one of the hand of his father. Due to said injury, his father died in the field, which was near the pond of Shyam Sundar Jha. Thereafter, the informant and his sister Birodhiya Devi raised alarm and said that “मेरे पिताजी को काट देलके हो।”. After hearing the alarm, Ram Khelawan Mahto (P.W.6), Fucho Mahto (P.W.1), Kamo Mahto (P.W.4), Ram Bilas Mahto



(P.W.2) arrived there, then all the accused persons fled away. In paragraph 5 of his evidence, C.W.1 (informant) stated that the reason for the occurrence was that his father was doing *sipahigiri* (Muscleman'ship) of his landlord Khurshid Khan, which was being opposed by the accused persons, but his father had not left the *sipahigiri* (Muscleman'ship), due to this animosity, the accused persons jointly had killed his father. He stated that regarding the occurrence, he had given statement/*fardbeyan* to the Daroga Ji of Bihariganj Police Station at the place of occurrence itself and Daroga Ji after writing his *fardbeyan* had read over to him and thereafter, he signed on the *fardbeyan* and he had identified his signature, which was marked as Ext. 1/1, whereas on perusal of the *fardbeyan* it is evident that same was recorded at the door of deceased. In paragraph 8 of his evidence, he stated that witness Ram Khelawan Mahto (P.W.6) has already died. In paragraph 10 of his evidence, he stated that accused Mukti Lal was not involved in the occurrence. He stated that due to mistake name of Yukti Lal was incorrectly disclosed as Mukti Lal. This witness has further stated in same paragraph that Mukti Lal was innocent. Surprisingly, in the *fardbeyan*,



accused Mukti Lal Mahto was arrayed as accused with his parentage and address also, but to the reasons best known to C.W.1, he has exonerated the accused Mukti Lal Mahto from all accusation and this was one of the reason that learned Trial Judge has passed order of acquittal in respect of accused Mukti Lal Mahto. In paragraph 11 of his cross-examination, he stated that he had studied up-to 8th class and he was peon in Udakishunganj block office, however; in paragraph 13 of his cross-examination, he stated that the accused persons had threatened him and he accepts that he had not filed any written information against anyone. In paragraph 15 of his cross-examination, he reiterated that in the *fardbeyan*, he had said that accused persons had mutilated his father by *dabiya*, which was seen by him with his sister. However, on going through the *fardbeyan* i.e. **Ext. 1**, it is evident that this witness is not speaking truth, since in the *fardbeyan*, no such specific word was uttered by informant/C.W.1. In paragraph 16 of his cross-examination, on being asked, he further reiterated that before the police he had stated that Bimal Mahto (app. in Cr.Appeal DB No. 1034/16) by means of *dabiya* started mutilating arm of his



father. He further stated that Alam Khan (app. in Cr.Appeal DB No. 1004/16) by means of *dabiya* started mutilating neck of his father, whereby the neck of his father was half cut, blood started oozing out and all those occurrence was seen by him and his sister Birodhiya (C.W.2). This fact is again contrary to the *fardbeyan*. In paragraph 19 of his cross-examination, he accepts that at the time of occurrence, the father was mukhiya of Laxmipur Lalchand village panchayat. In paragraph 21 of his cross-examination, he stated that after the occurrence, he had left the dead body of his father at the place of occurrence itself and it was not brought to his house. The dead body was at the place of occurrence till arrival of the police. The dead body was removed from the place of occurrence after arrival of the police. However, on examination of the inquest report, it is evident that the inquest report was prepared at the door of the deceased itself. In paragraph 37, he denied the suggestion that one Sandhya Devi was his first wife. He also denied that his first wife was having some relation with his deceased father. He further denied that he had left his wife after noticing such fact and he also denied that he had



himself killed his father. He also denied that the dead body was found on his door itself. He further denied that since accused persons were favouring his बटईदार (Bataidar) Rasik Lal, due to such reason, he falsely implicated the accused persons. On examination of the evidence of C.W.1(informant), it is difficult to place any reliance on his evidence, since there are many contradictions from his *fardbayan* itself.

17. C.W.2 Birodhiya Devi, sister of the informant (C.W.1) and daughter of the deceased too has also deposed almost similar to the evidence of C.W.1 and she accepts that about 4-5 years back from the time of occurrence, she was already married. The story of the informant (C.W.1) and C.W.2 Birodhiya Devi to the extent that both were moving on foot following the bullock-cart of the deceased also appears to be doubtful, since P.W.6 Ram Khelawan Mahto in his evidence had stated that the deceased was moving with C.W.1 (informant) only. He had not stated regarding presence of C.W.2 Birodhiya Devi. She in paragraph 18 of her cross-examination stated that before the police she said that Tetar Mahto was dragged by Domi Mahto (app. in



Cr.Appeal DB No. 1009/16) and he gave *dabiya* blow on his head. She further stated that she had stated before the police that Alam Khan (app. in Cr.Appeal DB No. 1004/16) slit neck and Bimal Mahto (app. in Cr.Appeal DB No. 1034/16) mutilated the arm. Since the investigating officer had not turned up to depose nor certain portion of the case diary was brought on record, it is difficult to place reliance on such evidence of C.W.2 (Birodhiya Devi). Moreover, being daughter of the deceased, who was married 4-5 years back, it is difficult to perceive that she was in a field at the time of occurrence and cutting grass, as it has been stated by her in her evidence.

18. C.W.3 Dr. Jang Bahadur Singh on 24-06-1993 was posted as Civil Surgeon in Sadar Hospital, Madhepura and on the same date at about 11:30 AM, he had conducted *post-mortem* examination on the dead body of deceased Tetar Mahto (Mukhiya) and he observed as follows:-

“(i) Sharp incised wound a bit left to middle of wall-3” x 1” x bone deep. On opening the caravel cavity – no haemotoma or injury of brain material was present.

(ii) Incised wound 4” x 2” x cutting the 5th curvical bone spinal cord at the root of back of the neck.



(iii) Sharp incised wound 3" x 2" x muscle deep just below injury no. 2.

On opening the chest and abdominal cavity – all viscera were pale.

Cause of death – Shock and Haemorrhage.

Opinion – Injury no. 2 was sufficient to cause death in ordinary course of event.

Time elapsed since death – About 20 hours."

He stated that the *post mortem* report was written by him and contained his signature, which was marked as **Ext. 2**. In his cross-examination, he has categorically stated that he had not found any other injury on the dead body, save and except above mentioned injuries.

19. After completion of the prosecution evidence, defence also examined three witnesses namely Gopal Mishra (D.W.1), Upendra Mahto (D.W.2) and Ram Mahto (D.W.3). However, during argument, learned counsel for appellants have not placed much reliance on their evidence. After going through the entire evidence, it is evident that prosecution in the case had miserably failed to establish place of occurrence. No explanation has been given as to under what circumstances inquest report in respect of finding of the dead body of the deceased was prepared at the door of the deceased. During trial, neither any seizure list



was brought on record nor any evidence was placed to show that at the place of occurrence, any mark of such occurrence was noticed or not. Neither it was disclosed by the prosecution that at the place of occurrence, there was blood or blood mark or trampling of the maize crops. It is also not believable as to once it was the case of the prosecution that deceased was dragged in the maize field and thereafter, he was assaulted and regarding height of the maize crop, it was already stated by the witness that height of maize was more than the height of the human being, in that event, it was difficult for the witnesses to show as to how they had noticed that which blow was given on the deceased by whom. The informant in his evidence had tried to develop a case, as if, he had seen as to who had given blow on neck or head or arm of the deceased, but in the *fardbeyan*, he had simply stated that after interception of the bullock-cart of the deceased, he fled and raised alarm and thereafter, they returned back. In the *fardbeyan*, nothing was indicated in respect of giving assault by any accused person. This creates serious doubt on the prosecution case.



20. The Court is of the opinion that if in a criminal trial of such nature, prosecution fails to establish place of occurrence, certainly benefit of doubt is to be extended to the defence. On examination of the *post-mortem* report of the deceased as well as evidence of C.W.3, who conducted *post mortem*, there is no difficulty to come to the conclusion that the deceased was having only incised injury, whereas, it was the case of the prosecution that deceased was caught hold and he was dragged from the bullock-cart to the maize field. In such situation, there was possibility of finding of some more injury like scratches on the person of the deceased, however; no such suggestion has come from the prosecution side. Rather it was the case of the prosecution that only incised injuries were found on the person of the deceased and as such, there is no reason to come to the conclusion that the prosecution has proved its case beyond all reasonable doubt. Another reason for examining the prosecution case with suspicion is that none of the independent witnesses have come forward to corroborate the prosecution case. The independent witnesses, who were cited by the prosecution regarding seeing occurrence have



not supported the prosecution case. P.W.1 Fuchio Mahto, P.W.2 Ram Bilas Mahto and P.W.4 Kamo Mahto, who were independent witnesses, have not supported the prosecution case. Meaning thereby that they had not seen the occurrence and they were declared hostile. Even the nephew of the deceased Jageshwar Mahto, who was examined as P.W.5, had turned hostile and not supported the prosecution case. So far as so called one independent witness i.e. P.W.6 Ram Khelawan Mahto is concerned, in absence of completion of his cross-examination due to non-production of such witness for further cross-examination, his evidence, contrary to the defence, may not be examined. Even, in his evidence, his attention was drawn as to whether before police in his statement recorded under Section 161 of the Cr.P.C., had he disclosed name of any of the accused persons, though denied, in absence of investigating officer, same evidence may not be relied. Now, evidence of only two witness i.e. C.W.1 and C.W.2, as discussed hereinabove, inspires no confidence and relying on such contradictory evidence, it would be difficult to approve the judgment of conviction and sentence.



21. So far as case of appellants Bimal Mahto (in Cr.Appeal DB No. 1034/16), Anandi Mahto (in Cr.Appeal DB No. 925/16) and Domi Mahto (in Cr.Appeal DB No. 1009/16) is concerned, on examination of the record, it is evident that after recording evidence of C.W.1, 2 and 3, those circumstances were never explained to those accused and without recording their statement under Section 313 of the Cr.P.C. after the evidence of C.W.1, 2 and 3, there was no reason for the Trial Judge to fix the case directly for argument and pass judgment of conviction and sentence.

22. On perusal of record of Sessions Trial No. 94 of 1995(S) side-by-side of record of Sessions Trial No. 94 of 1995, it is evident that case of three appellants was separated from Sessions Trial No. 94 of 1995 by order dated 09-03-16 and thereafter, for the first time, three appellants surrendered on 08-08-16 and they were taken into custody. On 22-08-16, they were produced from custody, however; due to bereavement of one of the senior counsel, none of the advocate had appeared. The three appellants were again remanded back and next date was fixed to 23-08-16 for argument of the prosecution. On 23-08-16, prosecution



argument was concluded and thereafter, next date was fixed to 24-08-16 for argument of the defence, on which date, argument concluded and case was fixed for judgment, whereas, after the case of aforesaid three appellants was separated from Sessions Trial No. 94/95, statement of rest of the accused persons in main trial under Section 313 of the Cr.P.C. was finally concluded on 30-05-2016 and thereafter, it was fixed for defence evidence and finally, after examination of three D.Ws., the defence evidence was closed and the case was fixed for argument and thereafter, on 23-07-2016, judgment of conviction in respect of eight appellants was passed. This categorically indicates that after three court witnesses C.W.1, C.W.2 and C.W.3 were examined, statement of these appellants under Section 313 of the Cr.P.C. was never recorded.

23. Moreover, on examination of entire evidence, we are satisfied that prosecution had miserably failed to establish its case and as such, the judgment of conviction and sentence dated 23-07-2016 and 26-07-2016 respectively passed in Sessions Trial No. 94 of 1995/CIS No. 1312 of 2013 {arising out of Udakishunganj (Bihariganj) P.S. Case



No. 83 of 1993} by Sri Mithilesh Kumar Dwivedi, learned Addl. Sessions Judge Ist, Madhepura in respect of eight appellants namely 1. Md. Alam Khan (in Cr. Appeal DB No. 1004/16), 2. Kamo Mahto, 3. Bhulo Mahto @ Bulo Mahto, 4. Ram Mahto, 5. Matru Mahto (appellants in Cr. Appeal DB No. 798/16), 6. Rajo Mahto, 7. Jagdish Chaudhary and 8. Chhote Lal Sah (appellants in Cr. Appeal DB No. 964/16) as well as judgment of conviction and sentence dated 27-08-2016 and 29-08-2016 respectively passed in Sessions Trial No. 94 of 1995 (S)/CIS No. 189 of 2016 {arising out of Udakishunganj (Bihariganj) P.S. Case No. 83 of 1993} by Sri Mithilesh Kumar Dwivedi, learned Addl. Sessions Judge Ist, Madhepura in respect of remaining three appellants namely 1. Bimal Mahto (in Cr. Appeal DB No. 1034/16), 2. Anandi Mahto (in Cr. Appeal DB No. 925/16) and 3. Domi Mahto (in Cr. Appeal DB No. 1009/16) are hereby set aside and all the aforesaid six appeals are allowed.

24. Since appellant Md. Alam Khan (in Cr. Appeal DB No. 1004 of 2016), appellant no. 1 Kamo Mahto, appellant no. 2 Bhulo Mahto @ Bulo Mahto & appellant no. 3 Ram Mahto (in Cr. Appeal DB No. 798 of 16) and appellant Domi



Mahto (in Cr.Appeal DB No. 1009/16) are in custody and their judgment of conviction and sentence has already been set aside, they are, hereby, directed to be released forthwith, if not wanted in any other case. The other appellants, who are on bail, are discharged from the liability of their bail-bond.

(Rakesh Kumar, J.)

Arvind Srivastava, J: I agree.

(Arvind Srivastava, J.)

Anay

AFR/NAFR	A.F.R.
CAV DATE	09.02.2018
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