

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.275 of 1995

1. Suresh Yadav s/o Jethu Yadav
2. Sitaram Yadav s/o Ram Charan Yadav
residents of Village - Pathrausa, P.S. - Noorsarai, District – Nalanda at
present Village – Puraina, P.S.-Karma (Sheikhpura), Distt- Sheikhpura
3. Baso Yadav s/o Sital Yadav
4. Rudal Yadav s/o Haricharan Yadav
5. Krishnandan Yadav @ Krishna Yadav, s/o Dukhan Yadav
6. Hardeo Yadav s/o Karu Yadav
7. Janardan Yadav s/o Kesho Yadav
8. Triloki Yadav @ Temple Yadav s/o Fagu Yadav
9. Madan Yadav s/o Haricharan Yadav
- 10 Arjun Yadav s/o late Dukhi Yadav
11. Bishundeo Yadav s/o late Dukhi Yadav
12. Mathura Yadav s/o Shital Yadav
13. Banaras Yadav s/o Late Karu Yadav
residents of village – Puraina P.S. - Korma (Sheikhpura), Distt- Munger (now
Sheikhpura)

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Suraj Narayan Sinha, Sr. Advocate Mr. Devendra Prasad Singh, Advocate Ms. Uma Kumari, Advocate
For the Respondent/s	:	Mr. Shiwesh Chandra Mishra, A.P.P

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 22-07-2019

This criminal appeal has been preferred against the
judgment of conviction and sentence order dated 18.08.1995
passed by the learned Additional District and Sessions Judge
VIIth, Munger (hereinafter referred to as trial court) in Sessions



Case No. 31 of 1991 by which and whereunder he convicted the appellants for the offences punishable under Sections 364, 302/149 and 201 of the Indian Penal Code and sentenced them to undergo life imprisonment for the offence punishable under Section 302/149, to undergo rigorous imprisonment for ten years for the offence punishable under Section 364 of the Indian Penal Code and to undergo rigorous imprisonment for seven years for the offence punishable under Section 201 of the Indian Penal Code. However, the learned Trial Court directed that all the above stated sentences shall run concurrently.

2. Briefly stated prosecution case is that P.W. 8 Rameshwar Kewat gave his *fard-e-beyan* on 07.04.1990 at 1.50 hours to P.W. 9 Braham Narayan Singh, the then S.I. of Korma Police Station, at P.S. Korma in presence of Ram Balak Kewat (P.W. 7), Arjun Sao (P.W. 1), Somar Kewat (P.W. 5), Kishori Kewat (P.W. 3), Loka Kewat (P.W. 4), and Mohan Kewat (P.W. 6), to this effect that on 06.04.1990 Shaligram Kewat (deceased) and Mahendra Kewat (deceased) along with Ram Balak Kewat (P.W.7) and Arjun Sao (P.W. 1) were returning to their home after seeing *Yagya* and reached near Kunda village at about 6.00 p.m. P.W. 8, further, stated in his *fard-e-beyan* that all the appellants as well as some unknown persons, all of a sudden,



came out from school and caught hold Shaligram Kewat and Mahendra Kewat. P.W. 8, further, claimed that he was also going to see *Yagya* and witnessed the aforesaid occurrence. He further claimed that Mahendra Kewat and Shaligram Kewat raised alarm, but the appellants and unknown persons started dragging both the aforesaid persons towards North side. P.W. 8 claimed that he ran to save them but the above-stated persons opened fire twice on him. However, he did not stop and, proceeded towards the aforesaid persons but Sitaram Yadav, Bishundeo Yadav and Banaras Yadav caught him and prevented to proceed further. He further claimed that the appellants took Mahendra Kewat and Shaligram Kewat towards river and after that he was released by the above stated three persons and the above-stated three persons also ran towards river. P.W. 8 stated that out of fear he returned to his village. However, P.W. 8, further, stated that when the hue and cry was raised by him as well as deceased persons, some people including Madan Yadav came running from village Kunda and aforesaid Madan Yadav also participated in the occurrence. P.W. 8, further, claimed that he came to his home and gave information about the aforesaid occurrence to some people and after that he along with some others went in search of Mahendra Kewat and Sharligram



Kewat but even after hectic search, he could not succeed to trace them out. P.W. 8 claimed that Fisheries Society of his village had taken settlement of ponds of his village and the appellants as well as people of their community wanted to take settlement of the aforesaid ponds and that was the reason the appellants committed the alleged occurrence. He also claimed that one Kailash Prasad Sinha was behind the alleged occurrence.

3. On the basis of aforesaid *fard-e-beyan* of P.W. 8, Sheikhpura P.S. Case No. 47/90 for the offences punishable under Sections 364, 379/34 of the Indian Penal Code was registered on the same day and the formal F.I.R was drawn up. The *fard-e-beyan* as well as formal F.I.R. were despatched from police station to the concerned court on 08.04.1990 but the *fard-e-beyan* and formal F.I.R. were put up before the concerned court on 11.04.1990.

4. P.W. 11 took the charge of investigation. He recorded the statement of witnesses, inspected the place of occurrence. In course of investigation, he got confidential information that two dead-bodies were lying in a well situated at village Abgil. He along with local *Chowkidar* and others went there and took out the two dead-bodies from a well. He also gave information to P.W. 8 as well as others about recovery of



aforesaid dead-bodies and having got the aforesaid information, allegedly, P.W. 8 and others went there and identified the dead-bodies.

5. P.W. 11 prepared inquest report and, thereafter, section 302 and 201 of the Indian Penal Code were added in the formal F.I.R. However, after completion of investigation, P.W. 11 submitted charge-sheet against the appellants for the offences punishable under Section 302 and other minor sections of the Indian Penal Code. The cognizance of the offence was taken and the case was committed to the Court of Session, in usual way and, thereafter, all the above-stated 13 appellants were put on trial before the learned trial court. All the appellants stood charged for the offences punishable under Section 364, 302/149 and 201 of the Indian Penal Code. The charges were read over and explained to appellants to which they denied and claimed to be tried.

6. In course of trial prosecution examined, altogether, 12 prosecution witnesses and also got exhibited inquest reports as well as other relevant documents. The statements of appellants were recorded under Section 313 of the Cr.P.C in which they reiterated their innocence and claimed their false implication. The defence also examined one defence witness



and apart from this, got exhibited certain documents as documentary evidence.

7. Learned trial court after evaluating the evidences available on record and having relied upon the testimony of prosecution witnesses, especially, P.W. 7 and P.W. 8 passed the impugned judgement of conviction and sentence order.

8. Learned counsel appearing for appellants challenged the impugned judgement of conviction and sentence order arguing that except P.W. 7 and P.W. 8, not a single prosecution witness claimed to have seen the alleged occurrence.

9. He, further, submitted that P.W. 7 and P.W. 8 are uncle and father of deceased Mahendra Kewat respectively and they are highly interested witnesses. He further submitted that the presence of P.W. 7 and P.W. 8 over the place of occurrence was highly doubtful, but even then the learned trial court placed reliance upon the testimonies of P.W. 7 and P.W. 8.

10. Learned counsel for the appellants, further, submitted that there were several contradictions, omissions and improvements in testimonies of the aforesaid prosecution witnesses, but the learned trial court ignored the aforesaid contradictions, omissions and improvements.



11. Learned counsel for the appellants, next, submitted that according to prosecution case itself, the alleged occurrence took place on 06.04.1990 and the *fard-e-beyan* of P.W.8 was recorded at 1.50 hours on 07.04.1990 and subsequently, the *fard-e-beyan* and formal F.I.R were despatched to the concerned court on 08.04.1990 but it is surprising enough that *fard-e-beyan* and formal F.I.R reached to the concerned Magistrate on 11.04.1990. Continuing his submission, learned counsel for the appellants submitted that as a matter of fact till 11.4.1990, the P.W. 8 had not made any statement before the police, but when on 11.04.1990 the dead-bodies were recovered, the P.W. 8 in collusion with P.W. 11 and other police officials lodged the case against the appellants on account of previous enmity and that is the reason the *fard-e-beyan* and formal F.I.R were put up before the court on 11.04.1990.

12. Learned counsel for the appellants, further, submitted that it is admitted case of the prosecution that none had seen the actual killing of the deceased persons nor any witness claimed to have seen the appellants throwing dead-bodies in the well. He also submitted that P.W. 7 and P.W. 8 only claimed that they had seen the appellants and some unknown



persons taking away the deceased and, therefore, it is obvious that the prosecution case hinges upon circumstantial evidence, but prosecution could not succeed to bring the complete chain of events to prove the guilt of appellants without any hypothesis and, therefore, the trial court committed error in convicting the appellants.

13. Learned counsel for the appellants, next, submitted that the learned trial court completely failed to appreciate the evidences available on the record in right perspective and that was the reason the learned trial court failed to come at right conclusion.

14. Learned counsel for the appellants, next, submitted that the prosecution came with specific case that the appellants and the people of their community wanted to take settlement of ponds of village and when they could not succeed, they committed murder of the deceased persons, as the deceased persons were active members of Fisheries Society of the village. Learned counsel for the appellants submitted that the prosecution did not bring any document to prove that the settlement of ponds was made to Fisheries Society. Furthermore, prosecution failed to prove this fact that the appellants wanted to take settlement of the ponds because



prosecution did not bring any document to prove the aforesaid fact, therefore, it can easily be said that the prosecution failed to prove the motive of the alleged occurrence.

15. On the other hand, learned Additional Public Prosecutor supported the impugned judgement of conviction and sentence order submitting that P.W. 7 and P.W. 8 claimed to have seen the occurrence of kidnapping and both the aforesaid witnesses very clearly stated that it were appellants, who took the deceased persons.

16. Learned Additional Public Prosecutor further submitted that the dead-bodies of deceased persons of this case were recovered from a well and the dead-bodies of deceased persons were identified by P.W. 7 and P.W. 8 and other prosecution witnesses.

17. He, further, submitted that the postmortem reports of deceased persons also support this fact that the deceased persons were brutally killed and, therefore, the aforesaid evidence and circumstances are sufficient to prove the guilt of the appellants. He submitted that the learned trial court has passed a well discussed and well thought judgement and there is nothing on the basis of which, the impugned judgement of conviction and sentence could be disturbed.



18. Having heard the rival contentions of the parties we went through the record along with lower court records and perused the impugned judgement. As we have already stated that, altogether, 12 prosecution witnesses were examined by the prosecution in course of trial and out of them only P.W. 7 and P.W. 8 claimed themselves to be eye-witness of the *factum* of kidnapping.

19. P.W. 1 Arjun Sao has been declared hostile. Although, P.W. 8 claimed in his *fard-e-beyan* as well as in deposition that P.W. 1 was also along with deceased persons when occurrence took place, but before the trial court P.W. 1 did not support the aforesaid claim of P.W. 8 and also denied to have made statement before P.W. 12. Therefore, it is obvious that there is nothing in the deposition of P.W. 1.

20. P.W. 2 Jogender Kewat is not an eye-witness of the alleged occurrence. He got information from police on 11.04.1990 that two dead-bodies were lying in well of village Abgil. This witness further says that having got the aforesaid information, he along with several villagers and *Daroga* went near the aforesaid well and he with the help of others took out two dead-bodies from the well. He claimed that aforesaid dead-bodies were of Shaligram Kewat and Mahendra Kewat. This



witness, further, claims that two gunny bags, filled with bricks, were tied with the waist of dead-body of Mahendra Kewat whereas, one gunny bag, filled with bricks, was tied with the waist of dead-body of Shaligram Kewat. This witness further claims that the inquest reports of both the dead-bodies were prepared in his presence as well as in presence of P.W. 7. He as well as P.W. 7 signed the aforesaid inquest reports. On being cross-examined by the defence, this witness admitted that he is son of P.W. 8. This witness also admitted that P.W. 7 is his cousin brother. This witness admitted at para 24 of his cross-examination that he had heard about the kidnapping of Shaligram Kewat and Mahendra Kewat. This witness also admitted at para 39 of his cross-examination that his statement was not recorded by police. This witness also admitted at para 40 of his cross-examination that the gunny bags and bricks were not seized by the police and the bags and bricks were left by the police at the place from where the dead-bodies were recovered. This witness also admitted that the clothes of deceased were not handed over to him as well as others.

21. The close scrutiny of statement of this witness goes to show that he had not seen the alleged occurrence of kidnapping of the deceased persons and on 11.4.90 this witness



got information about the recovery of dead-bodies of deceased persons of this case. It has been admitted by P.W. 2 that he is son of P.W. 8 (informant) and having got information of recovery of dead-bodies, he along with P.W. 8 and others went to the place from where dead-bodies were recovered. This witness, although, claims that the dead-bodies were recovered in his presence, but P.W. 12 has admitted that having recovered the dead-bodies he gave information to informant (P.W.8) in respect of recovery of dead-bodies.

22. P.W. 3 Kishori Kewat admits that on 06.04.1990 he was at his home and in the evening Ram Balak Kewat (P.W. 7) and Arjun Sao (P.W. 1) informed that Mahendra Kewat and Shaligram Kewat were kidnapped by the appellants and some unknown persons. Furthermore, P.W. 3 states that P.W. 7 and P.W. 1 also disclosed that two rounds of firing were made upon P.W. 8 and the culprits had caught P.W. 8 Rameshwar Kewat. P.W. 3, further, claims that having got the aforesaid information he along with several villagers went towards river in search of Mahendra Kewat and Shaligram Kewat and while they were going in search of the aforesaid persons, P.W. 8 met them on the way and P.W. 8 also repeated the same story which had already been stated by P.W. 7 and P.W. 1. P.W. 3 further claims that he



along with above-stated persons made hectic search of the deceased persons but could not traced out the kidnapped persons and, thereafter, he as well as others went to Korma police station where P.W. 8 gave his *fard-e-beyan*. This witness, further, claims that after recording *fard-e-beyan* as well as statements of some witnesses, P.W. 12 along with others went in search of deceased persons, but P.W. 12 also failed to trace the deceased persons out. This witness further admitted at para 51 of his cross-examination that when he got information regarding the kidnapping of deceased persons by the appellants, he apprehended that the victims might be killed by the appellants. He also admitted at paras 52 and 53 of his cross-examination that the Korma police station was at the distance of 2 k.m. from his village but when he as well as others got information about the kidnapping of deceased persons, they did not give any information to police nor sent any person to police station for giving information regarding the aforesaid kidnapping. Furthermore, this witness admitted at paras 54, 55 and 56 that he as well as others went to police station in midnight of the alleged occurrence and when they reached the police station, they met *Daroga* and thereafter having consulted with each others they gave their statements after one hour.



23. P.W. 4 Loka Kewat was tendered by the prosecution. He has stated nothing in support of the prosecution case.

24. P.W. 5 Somar Kewat says that on 06.04.1990 about 6.00 p.m. he was at his home and P.W. 7 and P.W. 1 came there and informed that the appellants as well as 10 to 20 unknown persons kidnapped Mahendra Kewat and Shaligram Kewat. This witness further says that P.W. 1 and P.W. 7 also disclosed that the appellants had opened fire on P.W. 8 on the place of occurrence but P.W. 8 escaped unhurt. This witness says that having got the aforesaid information he along with others went towards South side of his village Puraina in search of victims. He further claims that while he as well as others were going in search of victims, the P.W. 8 met them on the way and P.W. 8 disclosed about the alleged occurrence and accompanied them. This witness admits that he as well as others could not succeed to trace the victims out and they doubted that the victims might be killed by the appellants. This witness also states that he as well as others went to the police station where *fard-e-beyan* of P.W. 8 was recorded and after that police along with them also went in search of victims, but police also failed to trace the victims out. Thereafter, he as well as others returned



to their home. This witness also says that Mukhiya Kailash Prasad Sinha wanted to take settlement of six ponds of his village whereas deceased persons as well as community of Kewat caste wanted to take settlement of aforesaid ponds and that was the reason of alleged occurrence. This witness also says that on 11.04.1990 he got information from *Daroga* that dead-bodies had been recovered from a well and having got the aforesaid information he as well as others went there and after that the dead-bodies were taken out from the well. This witness admitted in his cross-examination that the appellants were accused in murder case of one Gajadhar Yadav but expressed his inability to say that the full brother of said Gajadhar Yadav had filed a protest petition disclosing this fact that the Gajadhar Yadav was killed by deceased Mahendra Kewat, Shaligram Kewat and others. He also admitted that he had never participated in settlement of ponds, but admitted that the settlement of ponds was taken by Kailash Prasad Sinha. This witness also admitted that when he got information of kidnapping of deceased persons, he apprehended that the deceased persons might be killed by the appellants, but even then he as well as family members did not go to concerned police station for giving information in respect of kidnapping of



deceased persons. This witness admitted that he had not made statement before the police that he had met with P.W. 8 Rameshwar Kewat on way.

25. P.W. 6 Mohan Kewat also repeats almost the same statement which had been made by P.W. 5. This witness also claims that he got information about kidnapping from P.W. 1 and P.W. 7. This witness further admits that having got the aforesaid information he as well as others went in search of deceased persons and they met P.W. 8 Rameshwar Kewat on their way and Rameshwar Kewat P.W. 8 also narrated the entire incident. This witness also admits that when he as well as others could not succeed to trace the deceased persons out, he as well as others thought that the deceased persons might be killed. This witness also admits that the appellants were accused in the murder case of Chandrika Kewat who was his uncle. He also admits that in the aforesaid case all the appellants were acquitted. This witness is a hearsay witness and this fact has been admitted by him at para 23 of his cross-examination. He also admitted at para 53 of his cross-examination that he got information about the alleged occurrence from P.W. 1 and P.W. 7 in the evening of date of occurrence. This witness also expressed his inability to say that his uncle Chandrika Kewat



and others were accused in the case of *dacoity* which was lodged by appellant Suresh Yadav and in the aforesaid case, some of the appellants were cited as prosecution witness.

26. P.W. 9 Dr. Rakesh Kumar Sinha claims that he did postmortem examination on the dead-body of Mahendra Kewat on 12.04.1990 at 2.45 p.m. He found several injuries on the person of the deceased and claims that some of the injuries found on the person of the deceased were caused by sharp cutting weapon. This witness also points out that death of Mahendra Kewat took place within 5 to 7 days prior to the date of postmortem examination. This witness proved the postmortem report of deceased Mahendra Kewat as exhibit 6. Although this witness has stated nothing regarding the stage of dead-body, but postmortem report (exhibit 6) goes to show that the decomposed body of Mahendra Kewat was recovered.

27. Similarly, P.W. 10 Dr. B.P. Gupta also claims that he did postmortem examination on the dead-body of deceased Shaligram Kewat on 12.04.90 at 2.15 p.m. and found several injuries. This witness says that some injuries were caused by sharp cutting weapon. This witness proved postmortem report of deceased Shaligram Kewat (exhibit 6/1). This witness has also not stated about the condition and stage of dead-body, but



(exhibit 6/1) postmortem report of the deceased Shaligram Kewat goes to show that the dead-body was in the stage of decomposition.

28. The perusal of testimonies of P.W. 9 and P.W. 10 as well as exhibits 6 and 6/1, it is well established that the deceased Mahendra Kewat as well as Shaligram Kewat died prior to 5 to 7 days of the postmortem examination of their dead-bodies. Moreover, the death of deceased Mahendra Kewat and deceased Shaligram Kewat is not in dispute.

29. P.W. 7 Rambalak Kewat and P.W. 8 Rameshwar Kewat are two important witnesses of the prosecution and both the aforesaid witnesses claimed to have seen the occurrence of kidnapping. P.W. 7 claimed that when the occurrence of kidnapping took place he along with P.W. 1 was with deceased Mahendra Kewat and deceased Shaligram Kewat whereas, P.W. 8 claims that he was going to attend *Yagya* and fortunately, he saw the occurrence of kidnapping.

30. Now it has to be seen as to whether any reliance can safely be placed upon the testimonies of P.W. 7 and P.W. 8. It is an admitted position that both the aforesaid witnesses are not only related with each others but they are related with the deceased persons also. It is true that the testimony of a



prosecution witness cannot be discarded only on the ground of being his interested and related witness but simultaneously, it is also true that the statement of that witness must be scrutinized with great care and caution.

31. P.W. 7 Ram Balak Kewat claims that on the alleged date of occurrence he was returning along with P.W. 1 and deceased persons namely, Shaligram Kewat and Mahendra Kewat on bicycle. This witness states that deceased Mahendra Kewat and Shaligram Kewat were on two separate bicycles whereas, he as well as P.W. 1 Arjun Sao were on one bicycle. This witness narrates the prosecution case as to how and by whom deceased Mahendra Kewat and Shaligram Kewat were forcibly taken away towards river. This witness claimed that appellants Jano Yadav, Madan Yadav, Hardeo Yadav, Krishnandan Yadav and Khaderan Yadav chased him as well as P.W. 1, but they fled away from there, leaving their bicycles behind them. This witness also claims that he saw P.W. 8 Rameshwar Kewat who was coming from village side and P.W. 8 also reached there. This witness also claims that he heard two sounds of firing and also noticed that appellants Banaras Yadav, Sitaram Yadav and Hardeo Yadav caught hold Rameshwar Kewat P.W. 8. This witness further says that he as well as P.W. 1



came to village and narrated the entire incident to P.W. 4, P.W. 5, P.W. 6 and others. This witness further says that he as well as others went in search of Mahendra Kewat and Shaligram Kewat and met P.W. 8 on the way. He further says that P.W. 8 also accompanied him and others, but even after hectic search, the victims were not traced out and after that he as well as others went police station where case was lodged. This witness at para 24 of his cross-examination says that on the alleged date of occurrence he had gone to attend the *Yagya* and had met the mother of deceased Mahendra Kewat, but it is pertinent to note here that P.W. 2 Jogender Kewat who is full brother of deceased Mahendra Kewat admitted in his cross-examination that on alleged date of occurrence, his mother had not gone to attend the *Yagya*. Moreover, this witness also admitted that on 11.04.90, police gave information that two dead-bodies were lying in a well and thereafter, he as well as others went there and dead-bodies of Mahendra Kewat and Shaligram Kewat were taken out from the well. In cross-examination, the defense made attempt to highlight the relation of this witness with P.W. 8 as well as deceased persons. However, this witness tried to deny his relation with P.W. 8 as well as deceased persons, but from perusal of deposition of this witness as well as deposition of



P.W. 2, it is obvious that this witness is agnate of P.W. 8. This witness admitted in his cross-examination that he as well as P.W. 1 and deceased persons left their village in the morning to attend the *Yagya* and they remained there for about 8 hours. This witness further admitted that he did not meet his co-villagers at the place of *Yagya*. He further admitted that near about 400 to 500 persons had attended the *Yagya* but all the aforesaid persons were unknown to him. It is pertinent to note here that P.W. 2 admitted in his deposition that on the alleged date of occurrence several co-villagers had gone to participate in the *Yagya* whereas, this witness states that no one of his village, except him as well as P.W. 1 and deceased persons, had gone to attend the *Yagya* on the alleged date occurrence. P.W. 7 also admitted that the distance of his village as well as the place where the *Yagya* was going on was about six miles and the place from where the victims were kidnapped was at the distance of three miles from the place where *Yagya* was going on. P.W. 7 further stated that when he as well as other left their homes for attending the *Yagya*, they had taken breakfast on their way and in breakfast they had taken *Nimki* etc. This witness also admitted that he as well as others had not taken their meal while they were present at the place of *Yagya*. This witness also



admitted that at the time of alleged occurrence they had seen 10 to 20 persons who were going to attend the *Yagya* but Rameshwar Kewat P.W. 8 was not among the aforesaid 10-20 persons. This witness also stated that the aforesaid 10 to 20 persons did not make any attempt to catch the accused persons. This witness stated that the appellants (accused persons) were armed with pistol, lathi, Bhalu etc. but the appellants were not carrying gun. This witness also admitted that when the accused persons caught deceased Shaligram Kewat and Mahendra Kewat, he as well as P.W. 1 fled away from there, leaving their bicycles behind them. This witness further states that while he as well as P.W. 1 were fleeing, they saw the P.W. 8 who was coming towards place of occurrence. This witness further admitted that when he as well as P.W. 1 returned to their village, they did not disclose the incident before Jogender Kewar (P.W. 2) and Janardan Kewat. This witness admitted that he had disclosed before the police that he had informed about the alleged offence to the villagers. This witness also stated that when he as well as others proceeded to make search of the victims, they met P.W. 8 at the distance of 1 k.m. from his village.

32. P.W. 8 Rameshwar Kewat is informant of this



case. This witness claims that on the alleged date of occurrence he was going to Sheikhpura and when he reached near pitch road of Kunda village, he noticed, that deceased Mahendra Kewat, Shaligram Kewat, Ram Balak Kewat (P.W. 7) and Arjun Sao (P.W.1) were coming on three separate bicycles. This witness further claims that deceased Mahendra Kewat and Shaligram Kewat were caught hold by the appellants near Kunda School whereas, P.W. 1 Arjun Sao and P.W. 7 Ram Balak Kewat fled away from there. This witness further claims that deceased Mahendra Kewat and Shailgram Kewat raised alarm and, thereafter, he ran towards the appellants as well as aforesaid three persons, but the appellants made firing upon him and, thereafter, he was also caught by some of the appellants. The remaining appellants took deceased Mahendra Kewat and Shaligram Kewat towards North side. However, he was released by the appellants subsequently giving threat to kill him, if he raised alarm. He further states that some villagers of Kunda village also came there, but out of fear they did not make any attempt to catch the appellants. This witness further claims that he proceeded towards his village for giving information about the alleged occurrence and while he was going towards his village, P.W. 7 and others met him on the way and, thereafter, he



disclosed the entire incident to them and went along with them in search of deceased persons. This witness also stated that when he along with others reached over the place of occurrence, he found that bicycles were also missing from the place of occurrence. This witness claims that the occurrence took place on account of dispute of settlement of ponds. This witness admitted that he never got settlement of the ponds in his name. This witness also expressed his ignorance as to whether appellants had given any petition for settlement of the ponds or not. This witness at para 35 of his cross-examination admitted that after recording his *fard-e-beyan*, only once he made statement before Daroga. This witness further stated that he had disclosed the name of those persons who had caught hold him. This witness further admitted that there was long standing enmity between the appellants as well as him. This witness further admitted at para 48 of his cross-examination that when he saw the appellants at the place of occurrence, none of the appellants were carrying any arms in their hands. This witness, further, admitted that only 13 accused persons (appellants) were present over the place of occurrence and except the appellants, there was no other person present there. This witness further stated that when deceased persons were caught hold by the



appellants, he was at the distance of 50-60 Bans (Bamboos) from the place of deceased persons where the appellants caught hold them. Again, this witness stated that apart from the appellants, 15-20 unknown persons were also there, but the aforesaid unknown persons were not carrying any arms. This witness, further, admitted that he had not claimed before the police that several persons ran towards the place of occurrence when the occurrence took place. This witness also admitted that when deceased persons caught by the appellants, appellant Madan Yadav came running there from Kunda village. This witness further admitted at para 52 of cross-examination that police did not find any sign of dragging or foot-prints on the place of occurrence. This witness admitted that neither he nor police visited the house of appellants on the alleged date of occurrence. This witness also admitted that police did not make enquiry from the villagers of Kunda village nor from the persons who reside nearby the place of occurrence.

33. The perusal of deposition of P.W. 7 and P.W. 8 goes to show that both the witnesses have given contradictory statements on material points. P.W. 7 claims that at the time of the alleged occurrence, the appellants (accused persons) were carrying arms in their hands such as *lathi*, *Bhala*, pistol etc.



whereas, P.W. 8 claims that at the time of alleged occurrence, the appellants (accused persons) were not carrying any weapon in their hands.

34. The aforesaid contradiction goes to show that either P.W. 7 or P.W. 8 had not witnessed the so-called occurrence of kidnapping of victims by the appellants. Had both P.W. 7 and P.W. 8 been witnessed the occurrence of so-called kidnapping, they would not have made such contradictory statements. Furthermore, after perusal of depositions of other material witnesses, we find that some of the prosecution witnesses claim that they had seen P.W. 8 at the place of occurrence when the occurrence took place whereas, some witnesses claim that when they reached over the place of occurrence they saw P.W. 8 coming from the village. No doubt, P.W. 7 and P.W. 8 claim that the appellants (accused persons) took the victims (deceased persons) with them, but the above-stated contradictions make their presence over the place of occurrence doubtful.

35. It is true that the defence did not draw the attention of P.W. 11, the Investigating Officer of this case, towards the delay in reaching the *fard-e-beyan* of P.W. 8 to the court, but, admittedly, the dead-bodies of deceased persons were



recovered from a well on 11.04.1990 and on the same day, the *fard-e-beyan* of P.W. 8 was put up before the concerned Magistrate and, therefore, aforesaid delay of four days in reaching the *fard-e-beyan* of the P.W. 8 to the concerned court creates doubt about this claim of prosecution that the *fard-e-beyan* of informant was recorded on 07.04.1990.

36. It is an admitted position that there was long standing enmity between the parties and, therefore, in the above-stated circumstances, the possibility of false implication of the appellants cannot be ruled out. The prosecution has come with a definite story that the appellants committed alleged crime as they wanted to take settlement of ponds, but P.W. 8 admitted in his cross-examination that the appellants had not applied for settlement of ponds for the year in which the alleged occurrence took place. Therefore, it appears that prosecution could not succeed to prove the motive of alleged occurrence beyond all shadow of reasonable doubts.

37. Admittedly, except P.W. 7 and P.W. 8 not a single prosecution witness claimed to have seen the occurrence of kidnapping and presence of P.W. 7 and P.W. 8 over the place of occurrence appears to be doubtful, if the contradictions occurred in their depositions are taken into consideration. It is also an



admitted position that none had seen the killing of the deceased persons or throwing their dead-bodies into the well.

38. The prosecution based his case on this circumstance that prior to recovery of dead-bodies of deceased persons, the appellants took the deceased persons forcibly, but when we have already observed that the presence of P.W. 7 and P.W. 8 over the place of occurrence was doubtful and except P.W. 7 and P.W. 8, none of the prosecution witnesses claimed to have seen the appellants taking away the deceased persons, then, it is obvious that there was no circumstantial evidence against the appellants to show their involvement in killing of the deceased persons.

39. Apart from the above-stated facts we also find that the I.O. (P.W. 11), specifically, stated that he did not find any cycle, as well as mark of dragging over the place of occurrence. Therefore, the aforesaid fact also creates doubt about the claim of P.W. 7 and P.W. 8. Furthermore, para 43 and other paragraphs of P.W. 11 go to show that P.W. 7 and P.W. 8 improved their statements during course of trial, as they made different statements before the trial court. Furthermore, P.W. 11 admitted at para 29 of his cross-examination that he did not seize the gunny bags in which the dead-bodies were found nor he had



seized bricks and other articles found with recovered dead-bodies.

40. The perusal of deposition of P.W. 11 goes to show that the P.W. 11 did not investigate the case in proper manner. P.W. 11 admitted that he did not make any attempt to locate the presence of appellants in their respective houses on 07.04.1990 and the aforesaid conduct of the Investigating Officer (P.W. 11) goes to show that on 07.04.1990 the name of appellants had not surfaced before him because had the P.W. 8 and other witnesses been named the appellants in the alleged occurrence, the I.O. (P.W. 11) certainly would have gone to the houses of the appellants to arrest them as well as to make inquiry but admittedly, P.W. 11 did not go to the houses of appellants on 07.04.1990 and afterwards to inquire about the alleged occurrence. Therefore, all the aforesaid circumstances make the prosecution case doubtful and, therefore, in our view, the appellants are entitled to get the benefit of doubt.

41. Accordingly, this appeal is allowed and the impugned judgment of conviction and sentence order dated 18.08.1995 passed by the learned Additional District & Sessions Judge VIIth, Munger in Sessions Case No. 31 of 1991, so far as it relates to the appellants, are, hereby, set aside. The appellants



are acquitted of the charges giving benefit of doubt to them. The appellants are on bail. They are discharged from the liabilities of their bail bonds.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

vinita/-

AFR/NAFR	AFR
CAV DATE	NA
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