

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.420 of 1994

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Inderdeo Yadav son of Late Keshwar Yadav resident of village
Barahtara PS Tekari District Gaya

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

=====

with

Criminal Appeal (DB) No. 491 of 1994

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Bishwanath Yadav son of Inderdeo Yadav resident of village
Barahtara PS Tekari District Gaya

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

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Appearance :

(In Criminal Appeal (DB) No. 420 of 1994)

For the Appellant/s : Mr. Zeyaul Hoda

For the Respondent/s : Mr.D.K.Sinha, APP

(In Criminal Appeal (DB) No. 491 of 1994)

For the Appellant/s : Mr.Zeyaul Hoda

For the Respondent/s : Mr. S.C. Mishra, APP

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

and

**HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA**

ORAL JUDGMENT

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

Date : 25-02-2019

1. Both the above stated criminal appeals have been
preferred against the impugned judgment and sentence order dated
05.08.1994 passed by Additional Sessions Judge, 11th, Gaya in S.T.



No. 287/1993/17/1994 by which and whereunder learned Additional Sessions Judge, 11th Gaya convicted the appellant in Cr. Appeal (DB). No. 491 of 1994 for the offence punishable under Section 302/34 of the Indian Penal Code and similarly, convicted the appellant in Cr. Appeal (DB). No. 420 of 1994 for the offences punishable under Sections 302/34 and 302/109 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for life. Since both the aforesaid appeals have arisen out of common judgment, a common judgment is being passed in both the above stated criminal appeals.

2. Briefly stated, the prosecution case is that PW-6, namely, Kamlesh Pd. Yadav gave his fardbeyan to PW-10 Awadesh Kumar Singh on 20.03.1992 at about 1 p.m. at village Bartara Lilami Badh to this effect that he along with his father Khalifa Yadav had gone to Lilami Badh to cut **Khesari** from his field before sun rise and while he as well as his father were cutting Khesari from the field at about 7 a.m., appellant Bishwanath Yadav being armed with Garasa as well as appellant Indradeo Yadav being armed with lathi came there and appellant Indradeo Yadav ordered to assault and thereafter, appellant Bishwanath Yadav, all of a sudden, hurled one Garasa below on his father. His father started fleeing towards south side but appellants chased him and appellant Bishwanath Yadav gave Garasa below on the head of his father as a result of which, his father, having sustained injury, fell



down in the field of Brijnandan (PW-2). PW-6 further claimed that appellant Bishwanath Yadav cut the chin of his father by Garasa and after that he raised alarm which attracted Yugeshwar Yadav (not examined), Shiv Nandan Yadav (PW-5), Uday Yadav(PW-4) who came running there and witnessed the occurrence. The appellants fled away towards canal and after washing Garasa from water of canal, threw the said Garasa in a wheat field. The reason behind the occurrence, as claimed by PW-6 in his fardbeyan, was that the appellant Bishwanath Yadav was a member of banned extremist group and he was insisting upon the deceased to become member of the said banned extremist group.

3. On the basis of fardbeyan of PW-6, Tikari P.S. Case No. 32 of 1992 for the offence punishable under section 302/34 of the Indian Penal Code was registered and on the same day formal FIR was drawn up for the aforesaid offence against the appellants. The FIR was put up before the Chief Judicial Magistrate, Gaya on 22.03.1992. PW-10 took charge of investigation. He prepared Inquest Report of the dead body of the deceased, recorded the statements of witnesses, inspected the place of occurrence. In course of investigation, one Garasa was produced by PW-6. He seized the aforesaid Garasa. Moreover, after completion of investigation, he submitted charge sheet against the appellants. The cognizance of the offence was taken and the case was committed to the court of sessions, in usual way. The appellants



were put on trial and the appellant Bishwanath Yadav stood charged for the offence punishable under section 302/34 of the Indian Penal Code whereas appellant Indradeo Yadav stood charged for the offences punishable under sections 302/109 and 302/34 of the Indian Penal Code. Both the appellants denied the charges and claimed to be tried.

4. In course of trial, prosecution examined, altogether, 10 prosecution witnesses and also got exhibited certain documents including Inquest Report and Postmortem Report. 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 appellants also got examined one defence witness, namely, Haridwar Yadav and apart from aforesaid defence witness, the court examined two witnesses as court witnesses.

5. Learned trial court, having evaluated the evidence, convicted and sentenced the appellants relying upon testimonies of prosecution witnesses.

6. Learned counsel appearing for the appellants challenged the impugned judgment of conviction and sentence order arguing that the learned trial court failed to appreciate the evidences in right perspective and, as a matter of fact, the learned trial court over-looked the major contradictions occurred in the testimonies of the prosecution witnesses. Learned counsel of the appellants, further, submits that the testimonies of the prosecution



witnesses go to show that none had seen the actual killing of the deceased but subsequently, the prosecution witnesses claimed themselves to be eye-witnesses of the alleged occurrence. He, further, submits that the seized Garasa was not produced before the trial court and moreover, the prosecution witnesses made contrary statements in respect of seized Garasa. He submits that no blood stain was found on the said seized Garasa nor the aforesaid seized Garasa was sent to forensic science laboratory for chemical examination and therefore, the aforesaid facts create doubt about the claim of prosecution witnesses that the seized Garasa had been used in committing the alleged crime. He, further, submits that it has come in evidence that the deceased was a man of questionable character and had inimical terms with several other persons and therefore, the deceased might have been killed by someone else but the informant and other prosecution witnesses, who had inimical terms with the appellants, falsely implicated the appellants in the present case.

7. On the other hand, learned Additional Public Prosecutor supports the impugned judgment of conviction arguing that eye-witnesses claimed to have seen the actual killing of the deceased and the eye-witnesses very clearly stated that it were appellants who committed the murder of deceased. He, further, submits that the prosecution has not only proved the manner of occurrence but also proved the place of occurrence and moreover,



the Garasa, which was used in committing the murder of the deceased, was seized by the Investigating officer during course of the investigation. He submits that seizure of Garasa has not been challenged by the defence and, therefore, even if the seized Garasa was not produced before the trial court, then also, the aforesaid laches of the prosecution is not fatal to the prosecution case.

8. Having heard the contentions of the parties, we went through the record along with lower court records. Now, it has to be seen, as to whether the prosecution succeeded to prove its case beyond all shadow of reasonable doubts and as to whether the leaned trial court rightly passed the impugned judgment of conviction and sentence order or not.

9. As we have already stated that, altogether, 10 prosecution witnesses were examined by the prosecution in course of trial. Out of aforesaid prosecution witnesses, PW-1 Sheopujan Prasad is a hostile witness, PW-2 Brij Nandan Yadav claimed himself to be eye-witness, PW-3 Ramdeo Yadav also claimed himself to be eye-witness. Similarly, PW-4 Uday Yadav, PW-5 Sheonandan Yadav, PW-6 Kamlesh Pd. Yadav and PW-7 Raghuni Yadav also claimed themselves to be eye-witnesses of the alleged occurrence. PW-8 Dr. Kapildeo Prasad claimed to have conducted postmortem examination on the corpus of the deceased whereas PW-10 happens to be Investigating officer of the present case. PW-



9 is a tendered witness. Moreover, PW-9 was again examined as court witness no. 2.

10. DW-1 Haridwar Yadav has been examined on behalf of the defence to prove bad character of deceased and the aforesaid DW1, Haridwar Yadav claimed that prior to alleged occurrence, deceased had made attempt to commit rape on an woman and had also made attempt to commit rape of wife of PW-6 on account of which PW-6 had assaulted the deceased.

11. PW-2 Brij Nandan Yadav claims that on the alleged date of occurrence at about 7 to 7.30 a.m., he was going to his field and on the way he saw the appellants and at that time the appellant Bishwanath Yadav was carrying Garasa whereas appellant Indradeo Yadav was carrying lathi. PW-2, further, claims that he reached at his field and thereafter, he saw the appellants who were abusing the deceased Khalifa Yadav. This witness further states that Khalifa Yadav started fleeing from his field but on the instigation of appellant Indradeo Yadav, appellant Bishwanath Yadav assaulted him by means of Garasa. He further, claims that Khalifa Yadav came running to his field but Bishwanath Yadav again, gave Garasa blow to Khalifa Yadav as a result of which, Khalifa Yadav fell down in the field and died then and there. This witness, further, claims that after the aforesaid occurrence, appellants fled away towards canal. This witness further claims that appellant Bishwanath was a member of an extremist banned



group and he was pressurising the deceased to become a member of the aforesaid extremist group. On being cross-examined, this witness admits that the name of his grand father was Harku Yadav who had three sons, namely, Rupan Yadav, Buddu Yadav and Mahadeo Yadav. This witness further admits that the deceased Khalifa Yadav was son of Buddu Yadav and the name of father of this witness is Mahadeo Yadav. This witness denies this fact that Rupan Yadav had grandson having nomenclature as Ramswroop. This witness, further, admits that Rupan Yadav had two sons, namely, Dashrath and Ghunni and Ghunni had two sons, namely, Swaroop and Jagroop. This witness further admits that one Nanhak Yadav is his maternal cousin son-in-law. This witness also admits that aforesaid Nanhak Yadav was accused in murder case of Dudheshwar Yadav who was full brother of appellant Indradeo Yadav. This witness also admits that the appellant Indradeo Yadav was informant in murder case of the Dudheshwar Yadav. This witness further claims that on the alleged date of occurrence, for the first time, he had seen the appellants outside the village and at that time they were abusing Khalifa Yadav but at that time, he did not raise any alarm. This witness admits that the alarm was raised after killing of the deceased and after killing of the deceased, almost all the persons learnt about the killing of the deceased. This witness, further, admits in his cross-examination that it was he who reached first on the place of occurrence and he also admits



that he reached at the place of occurrence after one hour of the alleged occurrence. This witness also admits that he reached on the field on which murder had taken place. This witness, further, admits that he raised alarm after killing of the deceased and after half an hour of raising alarm, villagers assembled there. This witness denies the suggestion of defence that he had made statement before police that one year prior to the alleged occurrence, an altercation had taken place between Lileshwar Yadav and deceased Khalifa Yadav. This witness further admits that PW-6 and PW-4 were pressurising the deceased for partition. This witness claims that when he reached at the place of occurrence, he saw Garasa but subsequently, appellants fled away with Garasa. This witness, further, admits that Garasa was thrown in a wheat field and he had seen the Garasa lying in wheat field. This witness at Para 41 of his cross-examination admits that at the time of alleged occurrence, only daughter-in-law of one Chandradeep was doing **Katni** near the place of occurrence but he expressed his inability to disclose the name of daughter-in-law of Chandradeep. This witness claims that he had made statement before the police to this effect that on the date of occurrence, he had gone to do agricultural work in his field. This witness at para 43 of his cross-examination admits that neither he had seen any person nor any Garasa on the place of occurrence. This witness at Para 44 of his cross-examination further admits that the villagers



brought the Garasa but he fails to disclose the name of the villagers who had brought the Garasa. This witness further admits that when people assembled after the occurrence, he saw the Garasa lying in a field. This witness admits at Para 47 of his cross-examination that towards north and south of the place of occurrence, there were fields of Khalifa Yadav. This witness denies the suggestion of defence that the appellants were dragged in the case to pressurize them not to depose in the murder of Dudheshwar Yadav. Furthermore, this witness also denies the suggestion of defence that before police he had not claimed himself to be eye-witness of the alleged occurrence. The close scrutiny of the testimony of PW-2 goes to show that cousin son-in-law of this witness was accused in the murder case of Dudheshwar Yadav who was full brother of appellant Indradeo Yadav. It also goes to show that the murder case of Dudheshwar Yadav was lodged on the basis of information given by the appellant Indradeo Yadav. Furthermore, it is also obvious from the testimony of this witness that this witness happens to be agnate of PW-6. Furthermore, it is an admitted case of the prosecution that the deceased was killed in the field of this witness because PW-6 claimed in his fardbeyan that when his father reached at the field of Brijnandan Yadav (PW-2), the appellant Bishwanath Yadav gave Garasa blow on the head of the deceased Khalifa Yadav who fell down there and died. PW 2 admitted at Para 47 of his cross-



examination that the field of Khalifa Yadav (deceased) was towards north and south side of the place of occurrence. This witness also admits in his examination-in-chief that his field is adjacent to the field of deceased Khalifa Yadav but at Para 19 of his cross-examination, he admits that he reached at the place of occurrence after murder of deceased Khalifa Yadav. The aforesaid admission of PW-2 goes to show that he was not present in his field at the time of alleged occurrence because it is the prosecution case that the murder of Khalifa Yadav had taken place at the field of PW-2 and, therefore, had the alleged occurrence taken place in the presence of PW-2, this witness would not have stated that he reached at his field after the alleged occurrence. One more thing is also important in the testimony of this witness. This witness has, nowhere, stated in his deposition that PW-6 was also present along with deceased at the time of alleged occurrence because this witness states that the appellants came at the field of deceased Khalifa Yadav who having seen the appellants started fleeing from his field. Moreover, this witness admits that he is agnate of deceased and also admits that his cousin son-in-law was accused in murder case of brother of appellant Indradeo Yadav.

12. No doubt, the testimony of an interested witness cannot be rejected only on the ground that the witness is an interested witness and has inimical term but it is settled principle of law that testimony of that witness should be scrutinized with



care and cautious. We have already pointed out the contradictions in the testimony of PW-2 and on the basis of aforesaid contradictions, the very presence of PW-2 over the place of occurrence becomes doubtful and, therefore, in our view, no reliance can safely be placed upon the testimony of PW-2.

13. PW-3 Ramdeo Yadav also claims that at the time of alleged occurrence while he was going to cut Kheshari from his field, he saw the appellants going towards the place of occurrence and at that time appellant Bishwanath Yadav was carrying Garasa whereas appellant Indradeo was carrying lathi. This witness, further, states that his field is situated near the place of occurrence. This witness claims that he saw that the appellant Bishwanath Yadav was assaulting the deceased. This witness further claims that the deceased Khalifa Yadav started running towards south side and when deceased Khalifa Yadav reached at the field of PW-2 Brij Nandan Yadav, the appellant assaulted him by means of Garasa. This witness, specifically, states that the appellant Bishwanath Yadav gave Garasa blow while Indradeo Yadav assaulted the deceased by means of lathi and after that the appellants fled away towards canal. This witness claims to have identified the appellants but the deposition of this witness goes to show that eyesight of this witness appears to be weak because at the time of identification of the appellants in the court, he could not identify the appellants when he went near the dock. However, in



cross-examination, this witness admits that he had weak eyesight. This witness admits at Para 10 of his cross-examination that for the first time, when he saw the appellants, the appellants were at the field of deceased Khalifa Yadav whereas this witness was at his own field. This witness admits that he had not gone near the deceased. This witness also admits that the distance between his field as well as field of Khalifa Yadav was about 2-3 or 4 **Bansh**. It is pertinent to note here that PW-2 had admitted in his cross-examination that at the time of alleged occurrence only daughter-in-law of one Chandradeep was working near the place of occurrence. This witness further admits that at the time of alleged occurrence, he was standing at the distance of 2-3 bansh from his field. This witness further states that it were PW-4 and PW-6 who raised alarm first and after the alleged occurrence PW-2 raised alarm. This witness further admits that he reached near the place of occurrence after one or two minutes of the alleged occurrence and when he reached near the place of occurrence, he saw the appellants fleeing from the place of occurrence. However, this witness claims that he had seen the alleged occurrence while he was at the ridge of his field. This witness denies this fact that the deceased Khalifa Yadav had sustained first Garasa blow while he was at his field. This witness further claims that when he reached on the place of occurrence, he had not seen the Garasa and even after the occurrence, he did not see the Garasa. This witness



further admits that there was tension between the members of MCC and members of IPF and in village Begha, members of IPF had killed four persons who were members of MCC. This witness denies the suggestion of defence that deceased was killed by members of extremist group as deceased was a man of questionable character. This witness admits that he had weak eyesight and furthermore, this witness admits that he had seen the alleged occurrence from some distance. However, PW-2 has, nowhere, stated about the presence of this witness near the place of occurrence when occurrence took place. Therefore, it is not safe to place reliance upon the testimony of this witness.

14. PW-4 Uday Yadav is son of the deceased Khalifa Yadav. This witness claims that his father (deceased) and his brother Kamlesh (PW-6) had gone to their field. This witness further claims that he also proceeded towards his field and while he was on his way, he saw the appellants. This witness claims that at that time appellant Bishwanath Yadav was carrying Garasa in his hand whereas appellant Indradeo Yadav was carrying lathi. This witness claims that the appellants reached at his field where his father and brother were cutting Khesari. This witness claims that the appellant Indradeo Yadav ordered other appellant to kill the deceased Khalifa Yadav and having heard the aforesaid order of appellant Indradeo Yadav, his father started running and reached in the field of Brij Nandan (PW-2). His father was chased by the



appellants and appellant Bishwanath Yadav gave Garasa below on the head of deceased as a result whereof the deceased fell down on earth. This witness further claims that when his father fell down on the ground, again two blows of Garasa were given to his father and appellant Indradeo Yadav gave lathi blows to his father. This witness claims that after the occurrence, the appellants fled away towards west side. This witness claims that he raised alarm which attracted PW-2, PW-3, PW-5 and others who witnessed the alleged occurrence. This witness states at Para 24 of his cross-examination that when the alleged occurrence took place, near about 40 to 50 persons were doing Katani in and around his field. This witness further admits in Para 32 of his cross-examination that when he reached at the place of occurrence, there were 10 to 12 persons present from before and after that several other persons assembled there. This witness claims that all the aforesaid 10 to 12 persons were of his co-villagers. This witness also admits that when he as well as PW-6 touched the dead body of deceased, the shirt of his brother PW-6 soaked with blood. This witness further admits that after the occurrence, he did not see any Garasa in the field of Brij Nandan Yadav. At Para 38 of his cross-examination, this witness states that the name of his grand father was Buddu Yadav but Buddu Yadav had no brothers having nomenclature as Roopan and Mahadeo. This witness denies the suggestion of defence that Mahadeo and Roopan were full brothers of Buddu Yadav.



However, this witness admits that Brij Nandan Yadav(PW2) and Sheonandan (PW-5) are sons of Mahadeo Yadav. This witness states that the deceased had no enmity with the appellants. This witness denies the suggestion of the defence that he as well as others falsely implicated the appellants in the present case as his family members as well as family members of other prosecution witnesses were accused in murder case of Dudheshwar Yadav which was lodged by the appellant Inderdeo Yadav.

15. Admittedly, this witness is son of the deceased-Khalifa Yadav but it is surprising enough that PW6, who happens to be full brother of this witness has, nowhere, stated in his fardbeyan about presence of this witness on the place of occurrence. It is true that at the time of making fardbeyan, it is not necessary for maker to name each and every person who witnessed the occurrence but in the present case, non-mentioning the name of PW4 by PW 6 in his fardbeyan is fatal to the prosecution case because PW-4 is non-else than the full brother of PW-6 and, therefore, the aforesaid circumstance creates doubt about the presence of PW4 at the place of occurrence. It is pertinent to note here that had PW4 been present at the time of alleged occurrence and had witnessed the alleged occurrence, PW6 would have certainly mentioned his name in his fardbeyan as eye-witness.

16. PW5, Sheonandan Yadav is full brother of PW2. This witness claims that he had seen the appellants going towards



field of the deceased. This witness also claims to have seen the alleged occurrence. This witness further claims that at the time of occurrence, he was standing at the field of PW2 but PW2 has, nowhere, stated about presence of this witness at the time of alleged occurrence. Moreover, conduct of this witness reflects from his answer given by this witness in his cross-examination. At para 6 of his cross-examination, this witness stated that PW2 Brijnandan Yadav is not his full brother rather PW2 is his co-villager. The aforesaid answer of PW5 is apparently wrong because PW2 is full brother of this witness as father's name of both witnesses is same. Subsequently, when he was confronted by the defence by placing some other questions, he admitted that he as well as PW2 is full brother. This witness at para 9 of his cross-examination admits that he had stated before police that at the time of occurrence, he was going to field for cutting Kesari. This witness further admits that he had stated before the police that on the order of appellant Indradeo Yadav, appellant Bishwanath Yadav assaulted the deceased by means of Garasa. However, PW10, Investigating officer of this case at para 13 of his cross-examination admits that this witness stated before him that he had heard about the alleged occurrence. The aforesaid statement of PW-10 goes to show that in course of investigation, PW-5 had not claimed himself to be eye-witness of the alleged occurrence rather he had claimed before the Investigating officer that he had heard



about the alleged occurrence and, therefore, the aforesaid fact clearly goes to show that this witness improved his statement during course of trial. However, at Para 15 of his cross-examination, this witness claims that PW-6, PW-4, PW-2 and PW-3 came at the place of the occurrence after arrival of this witness. This witness also admits at Para 18 of his cross-examination that when he reached at the place of the occurrence, he heard that Khalifa Yadav had been murdered. This witness at para 20 of his cross-examination admits that there were two groups in his village and the appellants belong to a group whereas this witness and other prosecution witnesses belong to a different group. This witness also admits at para 21 of his cross-examination that PW6 had not given or shown garasa to him. This witness also states that he had not seen garasa on the place of the occurrence. This witness further states that he remained at the place of occurrence till taking away dead body of the deceased but he failed to say who had brought garasa. This witness states that he had not made statement before the police that deceased-Khalifa Yadav had misbehaved with Pramila Devi wife of appellant Indradeo Yadav and on account of that appellant Indradeo Yadav assaulted the deceased by means of Garasa. After scrutinizing the entire deposition of this witness, we find that the presence of this witness on the place of occurrence is doubtful because PW-2, who happens to be brother of this witness, has, nowhere, stated about presence of this witness



at the time of alleged occurrence, particularly, in the circumstance, when PW2 as well as this witness claim that they were working in their field at the time of alleged occurrence. Apart from this, PW-6 has not stated about the presence of this witness in his fardbeyan.

17. PW-6, Kamlesh Pd. Yadav is the informant as well as son of the deceased-Khalifa Yadav. This witness claims that at the time of alleged occurrence, he was working in his field along with the deceased. This witness narrates the manner of occurrence and states that the appellants came at the field and on the instigation of appellant Indradeo Yadav, appellant Bishwanath Yadav started assaulting deceased-Khalifa Yadav by means of Garasa and thereafter, Khalifa Yadav ran towards north side but he was chased and appellant Bishwanath Yadav assaulted the deceased by means of Garasa in the field of PW2 and when deceased-Khalifa Yadav, having sustained injury on his head, fell down on the ground, appellant Bishwanath Yadav, again, assaulted him by means of Garasa. This witness, further, claims that the appellant Indradeo Yadav assaulted the deceased by means of Lathi.

18. Admittedly, PW-6 has, nowhere, stated in his fardbeyan that appellant Indradeo Yadav had assaulted the deceased by means of Lathi nor post mortem report of the deceased supports this fact that the deceased had sustained any injury said to be caused by hard and blunt substance. Moreover,



this witness, further, states that after occurrence, appellants fled away towards canal and he remained there with the dead body of his father. This witness claims that after the occurrence, police came and recorded his fardbeyan. This witness, further, states that appellant Bishwanath Yadav was pressurizing his father to join extremist group. This witness, further, states that he as well as deceased had gone to cut Khesarai and they had carried rope for cutting Khesari from the field. This witness admits that he did not make any attempt to save his father, though other persons who were doing agricultural work in and around place of occurrence, came running to save his father. This witness states that after occurrence, Brijnandan Yadav (PW-2), Sheonandan Yadav (PW-5), Ramdeo (PW-3) came there and after their arrival, other witnesses reached at the place of the occurrence. This witness at Para 11 of his cross-examination admits that his brother Uday Yadav (PW-4) came on the place of the occurrence after having heard noise. This witness admits that information regarding alleged occurrence was given by Chaukidar who came on the place of the occurrence having heard noise and after that he informed the police. This witness states that he had not disclosed anything before Chaukidar nor Chaukidar had asked anything from him about the alleged occurrence. This witness, further, admits that after half an hour of the alleged occurrence, Chaukidar reached at the place of occurrence. This witness states that the appellants, after



committing alleged crime, fled away with Garasa. This witness, further, states that he had not given any Garasa to the police. He, further, states that blood was not found on the cloth. This witness denies this fact that he had committed murder of his father and to conceal his involvement, he threw Lungi near the dead body. This witness, further, admits at Para 19 of his cross-examination that prior to the alleged occurrence, appellants had not taken any step to commit murder of the deceased rather they had only given threatening to kill the deceased. This witness, further, admits that appellants were giving threat to the deceased for more than two years. This witness states that there was previous enmity between the appellants and his father but one or two days prior to the alleged occurrence, appellants had not given any threatening to the deceased.

19. PW-7, Raghuni Yadav claims to have seen the appellants having armed with Garasa and lathi fleeing from the place of the occurrence. This witness is cousin brother of PW-2 and PW-5. This witness admits that brother of the appellant Indradeo Yadav was killed and family members of PW-6 and others were made accused in the aforesaid murder case. At para 14 of his cross-examination, this witness admits that his statement was not recorded by the police nor any enquiry was made by the police from him.



20. PW-8, Dr. Kapildeo Prasad did post mortem examination on the dead body of the deceased and found three incised wounds. PW-8 did not find any injury caused by hard and blunt substance and the aforesaid fact has been admitted by PW-8 in his cross-examination.

21. PW-10, Awadhesh Kumar Singh states that he got rumour about the alleged occurrence and having got the aforesaid rumour, he went to the place of the occurrence, recorded fardbeyan of PW-6. This witness, further, states that when he reached at the place of the occurrence and inspected the place of occurrence, he found one Garasa lying by the side of dead body of the deceased and PW6 disclosed that the aforesaid Garasa had been used in committing murder of the deceased. PW-6 also disclosed that appellants washed the aforesaid Garasa in canal and after that they threw the aforesaid Garasa. This witness, further, states that he seized blood stained earth as well as Garasa which was found on the place of occurrence. This witness admits in his cross-examination that he did not record statement of Yugeshwar Yadav as well as Surajdeo Prasad Singh, though the aforesaid persons were named in the fardbeyan of PW6. This witness also admits that he did not seize blood stained cloth of the deceased. This witness also states that he did not find any bloodstain on the seized Garasa which was rusted Garasa. This witness also admits that he had not sent seized Garasa for chemical examination. This witness



also admits that he did not find any bloodstain on the seized lathi. This witness admits that PW-6 in his further statement had claimed that villagers had brought the aforesaid Garasa and thereafter, the aforesaid Garasa was produced before PW-10. This witness also admits that he had not inspected wheat field from which seized Garasa was brought by the villagers. This witness also admits that he did not take any step to find out foot steps of the appellants near the canal. This witness also admits that distance between place of occurrence as well as said canal was about one mile. This witness, further, admits that he had gone up to canal but did not inspect the aforesaid canal minutely.

22. After scrutinizing and evaluating entire evidences of the prosecution, we find that all material prosecution witnesses come under the category of interested witnesses and furthermore, we find that so-called eye-witnesses had grudge against the appellants Indradeo Yadav as either relatives or family members of the prosecution witnesses were made accused in murder case of Dudheshwar Yadav who was full brother of appellant Indradeo Yadav. Furthermore, we have already discussed that presence of almost all the so-called eye witnesses on the place of occurrence appears to be doubtful as they have made contradictory statements against each others. Furthermore, prosecution claims that Garasa which was used in committing the alleged crime was seized from the place of the occurrence but on this point also, there are



contradictions in the statements of the prosecution witnesses. So-called eye witnesses state that they had not seen Garasa on the place of occurrence but PW-10 claims that when he reached at the place of occurrence, he found seized garasa lying by the side of the dead body of the deceased. So called eye witnesses claim that after committing murder of the deceased, appellants went to canal and having washed off seized Garasa, they threw said garasa in wheat field. Investigating officer(PW-10) admits in his evidence that distance between canal and the place of occurrence was about one mile. It appears improbable and unnatural that after committing murder of the deceased, appellants covered distance of one mile and having washed off Garasa, they again came back near the place of occurrence and threw the aforesaid Garasa in wheat field. Moreover, PW-10 admits that he did not inspect the wheat field nor any blood was found on the seized Garasa. Furthermore, PW-10 also admits that seized Garasa had not been sent for chemical examination. As we have already stated that there are vital contradictions in the statements of the prosecution witnesses on the point of seizure and recovery of the aforesaid Garasa, therefore, in our view, prosecution fails to prove its case beyond shadow of all reasonable doubts that seized Garasa had been used in committing the murder of the deceased.

23. We have already discussed that the presence of almost all so-called eye-witnesses over the place of occurrence



appears to be doubtful and it appears that none had seen the actual killing of the deceased and almost all the prosecution witnesses came on the place of occurrence after murder of the deceased. Furthermore, it is an admitted position that almost all material witnesses are family members and agnates of PW-6 and they had inimical terms with the appellants and, therefore, keeping in mind the vital contradictions occurred in the statements of prosecution witnesses, in our view, it is unsafe to convict the appellants on the basis of testimonies of the above stated prosecution witnesses and in our view, the appellants are entitled to get benefit of doubt.

24. On the basis of the aforesaid discussions, these criminal appeals are allowed and impugned judgment of conviction and sentence order are, hereby, set aside. Appellants are acquitted of the charges giving benefit of doubt. Both appellants are on bail. They are discharged from the liabilities of their bail bonds.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

s.hassan/-rajeev

AFR/	AFR
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