
(2005) 03 PAT CK 0030
In the Patna High Court
Case No : Criminal Appeal No. 203 of 2001

Kapil Yadav @ Kapildeo Yadav and Others	APPELLANT
Vs	
The State of Bihar	RESPONDENT

Date of Decision : 07-03-2005

Acts Referred:

Arms Act, 1959 — Section 27
Penal Code, 1860 (IPC) — Section 137, 148, 149, 302, 302

Citation : (2005) 3 PLJR 184

Hon'ble Judges : Mridula Mishra, J; M.L. Visa, J

Bench : Division Bench

Advocate : Rana Pratap Singh, Tarkeshwar Pd. Verma and Gopal Pd. Roy, for the Appellant; Lala Kailash Bihari Pd. For the State, for the Respondent

Final Decision : Allowed

Judgement

Mridula Mishra, J.—Appellants in both these appeals have been convicted by the 7th Additional Sessions Judge, Bhagalpur in Sessions Trial No. 575 of 1997 under Sections 302 of the Indian Penal Code (hereinafter to be referred to as the I.P.C.) and u/s 364A I.P.C. Appellants have been sentenced rigorous imprisonment for life for their conviction under sections 302 of the Indian Penal Code and to pay a fine of Rs. 5,000/- each and in default rigorous imprisonment for six months. u/s 364A of the I.P.C. they have been sentenced to undergo rigorous imprisonment for ten years. Appellants have further been convicted u/s 148 I.P.C. but no separate sentence has been awarded for this offence.

2. Bholi Yadav, P.W. 10 gave his faro beyan on 19.11.1996 at about 4 A.M. before S.I. Bath police station at his residence stating that on 18.11.1996 at about 8 P.M. he along with his family members was gossiping and warming up near "Ghura", all on a sudden his villagers namely Tunna Yadav, Kapil Yadav, Manoj Yadav, Sanoj Yadav and Anil Yadav all armed with muscat three-nut and guns came there and tried to take away Arbind Yadav and Bhairo Yadav. Bholi Yadav wanted to resist them from doing so whereupon Tunna Yadav fired from his gun

which caused pellet injury to the informant and Arbind Yadav. The accused persons took away his nephew Arbind Yadav and cousin Bhairo Yadav. He raised alarm and his family members as well as several villagers assembled there. They started searching for Arbind Yadav and Bhairo Yadav. In course of search dead body of Arbind Yadav was found lying in the paddy field near Milki Tand in the back side of the village. The dead body was brought and kept on a cot in front of the house of Upendra Yadav (not examined). Bhairo Yadav could not be traced and he is still traceless. The occurrence took place as Tunna Yadav demanded commission in the purchase of land by the informant which was not fulfilled. He used to give threat all time. Tunna Yadav used to realise Rangdari Tax from Tanga, Thela persons. After the occurrence Tunna Yadav set the houses of Naresh Yadav, Umesh Yadav, Susil Yadav and Suresh Yadav on fire to create defence and to save themselves from conviction. Arbind Yadav was died because of fire arm injury as well due to strangulation.

3. Bath P.S. Case No. 35 of 1996 was instituted on the basis of the fard beyan of PW. 10 against all named accused persons under Sections 137, 148, 149, 307, 302, 364, 384 of the Indian Penal Code and 27 Arms Act. On conclusion of the investigation chargesheet No. 7 dated 13.5.1997 was submitted against five persons including the appellants for the same offence, cognizance was taken, case was committed to the court of sessions and after trial the appellants were convicted and sentenced as stated above. They were acquitted from charge framed u/s 307 of the Indian Penal Code.

4. The defence of the accused/appellants as revealed from the defense exhibits evidence of Defence witnesses and cross examination of the prosecution witnesses, is that on the date of occurrence at 8 P.M. the prosecution party forming an unlawful assembly came to the house of Tunna Yadav and other appellants, abused them and threatened them. The accused appellants out of fear hid themselves in the paddy field. Domi Yadav set fire to the houses of accused and their relatives. They also opened fire which resulted into the death of Arbind Yadav, who was a member of the prosecution party.

5. In support of their defence they examined D.W.1 Ajoy Kumar Rai who proved Ext. A the complaint petition and Ext.-B formal F.I.R. D.W. 2 Susil Yadav supported the defence version in his deposition.

6. The prosecution examined 13 witnesses who can be put in three categories. P.W. 1 Ganesh Yadav, P.W. 2 Raso Yadav, P.W. 5 Polo Jha have been declared hostile. P.W. 5 was cross examined by the prosecution. These witnesses did not support the prosecution version. Second category of witnesses are those who are related to each other and to the deceased. They also claimed to have witnessed 1st part of the occurrence. They are P.W. 3 Sanjay Kumar nephew of the informant, P.W. 4 Suresh Yadav, father of informant, P.W. 7 mother of P.W. 3 and sister-in-law of informant. P.W. 8 Sagar Devi is wife of younger brother of P.W. 4 Suresh Yadav, P.W. 9 Wakil Yadav a relation of P.W. 10. Bholi Yadav, P.W. 10 is the informant who is son of Suresh Yadav, P.W. 4. 3rd category of prosecution

witness are P.W. 11 Dr. Atul Kumar Mallick who conducted postmortem on the dead body of the deceased. P.W. 13 Jyotish Kr. Sinha, 1st I.O. who recorded the fard beyan of informant, statement of witnesses, prepared inquest report, and inspected the place of occurrence. P.W. 12 Ram Suresh Singh is the second I.O. who made part investigation since 24.10.1997 after taking charge from P.W. 13 and submitted chargesheet in the case. Fourth category of witness is P.W. 6 Bauku Paswan who is the Dafadar and has deposed that on 19.11.1996 at 7 O'clock, he saw the dead body of Arbind Yadav at the darwaja of Upendra Yadav. He asked from people assembled there about the manner of occurrence and names of accused but no one stated anything about the occurrence. In his cross examination he has stated that at that time Bholi Yadav P.W. 10, Suresh Yadav P.W. 4, Wakil Yadav P.W. 9 and Sajan Yadav P.W. 3 were present, but they did not disclose the name of any accused. The family members of deceased present there also did not disclose anything about the occurrence as well as the accused. He stayed there for some time. The Officer-in-charge of police station came there in his presence and the dead body was sent for post-mortem.

7. P.W. 3, 4, 7, 8, 9 and 10 are the material witnesses who have deposed on the point of occurrence and claimed to be the eye witness of the first part of the occurrence. The occurrence is in two parts, first part of the occurrence as per the fard beyan, has taken place at Darwaja "of P.W. 10, where the accused persons came armed with deadly weapons, opened fire caused injury to the informant as well as Arvind Yadav and forcibly took away Arvind Yadav and Bhairo Yadav towards Milki Tand. These witnesses have claimed to be the eye witnesses of this part of the occurrence. So far the other part of the occurrence i.e., killing of Arbind Yadav is concerned it has not been witnessed by any one only evidence regarding killing of Arvind Yadav is that on search his dead body was recovered from Milki Tand, which was carried and brought to the house of Upendra Yadav and was put on a cot.

8. P.W. 3, nephew of informant has not supported the prosecution story in same manner as has been given in the fard beyan though he has claimed to be present at the house of informant when the accused persons came armed with musket, gun and 3x3. He has stated that the accused persons took away only Arbind Yadav. So far the kidnapping of Bhairo Yadav is concerned, P.W. 3 has not supported the prosecution case. He has clearly stated that Arbind Yadav was taken away by the accused persons, but Bhairo Yadav remained with him at the place of occurrence for half an hour. He has also not supported that any fire arm injury was caused at the first place of occurrence either to Arbind Yadav. P.W. 3 has stated that the accused persons came and started firing indiscriminately Tuntun Yadav fired which caused fire arm injury on the chest of Bholi Yadav. He ran away from there. Arbind was forcibly taken to Milki Tand and there he was killed. This witness in his examination in chief has stated that the Bhairo remained there at the place of occurrence, but in his cross examination he has stated that the Bhairo became traceless. This witness has stated that Milki Tand Bhairo was at a distance of 10 K.M. and the dead body of Arbind Yadav was

found there at 10 P.M. P.W. 4 is the father of informant and the first place of occurrence as per the fard beyan is his house, where first part of occurrence, according to P.W. 3, P.W. 4, P.W. 9 and 10 took place. P.W. 4 has stated that he along with his son Bholi Yadav, (P.W. 10) Arbind Yadav (deceased) and Bhairo Yadav were warming themselves and gossiping at his Darwaja, Accused persons suddenly came and opened fire which caused fire arm injury on the chest of P.W. 10 Bholi Yadav. P.W. 4 has also not stated that Arbind Yadav received any fire arm injury at the first place of occurrence. This witness has not named any one that who committed the murder of Arbind Yadav. According to P.W. 4 accused persons took away Arbind Yadav and Bhairo Yadav, subsequently the dead body of Arbind Yadav was found in the paddy field situated at Milki Tand and Bhairo Yadav could not be traced. P.W. 4 in paragraph 4 of his cross examination has alleged that the appellant Tunna Yadav himself set fire to his house after one and half hours of the occurrence, and the house of Tunna Yadav was burnt to ashes. PW. 4 has stated that his son Bholi Yadav (PW. 10) after receiving fire arm injury left the place and hide himself in the house of Upendra Yadav situated at a distance of 10 cubits from his house. PW. 10 returned back at about 11 P.M., thereafter his son alongwith people of that tola went to police station. They reached at police station at 1-2 A.M. The dead body of Arbind Yadav had been searched and found before his son (PW. 10) and people of the tola had gone to police station. They proceeded for police station after keeping the dead body of Arvind Yadav at the Darwaja of P.W. 4 The Officer-in-charge of the police station had recorded his statement at police station itself. Fard-beyan of Bholi Yadav was recorded at the police station on which he put his L.T.I. Dead body of Arving Yadav was being guarded by the bodyguard of the Inspector of Sultanganj when they had gone to police station. The I.O. came along with them at the place of occurrence in the morning. Bholi Yadav (P.W. 10) was sent to hospital from Police station itself where he remained admitted for 3-4 days and after 5 days he came back to his village. PW. 4 has admitted that he had enmity with Tunna Yadav due to land dispute but he again denied that there was any land dispute. PW. 4 has stated that Tunna Yadav used to collect Rangdari he was demanding rangdan from him as he had purchased two kathas of land. PW. 4 has denied the suggestion that no such occurrence as stated in this case has taken place and in fact the F.I.R. which has been lodged by Sushil Yadav relates to the real occurrence.

9. PW. 7 is the mother of deceased Arbind Yadav. She has stated that the place of occurrence is her house. Arbind Yadav and Bhairo Yadav were taken away by the accused persons and Bholi Yadav was fired upon by the accused at her house. She has admitted that she has not seen who actually killed Arbind Yadav. She has also stated that to create defence Tunna Yadav set fire to his own house. According to PW. 7 the dead body of Arbind Yadav was recovered at 9 P.M. from Milki Tand Bahiar and the house of Tunna Yadav was set on fire at 10 P.M. she has also stated that the dead body of Arbind Yadav remained for the whole night at her house. In the morning it was taken for post-mortem by the police. In the

night itself PW. 10 alongwith people of tola had gone to police station to give information. They came back to the village alongwith Officer-in-charge in the next morning and her statement was recorded by the I.O. at her Darwaja. She has also stated that her deceased son had not taken his meal when he was shot and killed. She has denied that Arbind Yadav received fire arm injury due to fire open by her own family members who had set fire to the house of Tunna Yadav. P.W. 8 Sagar Devi is the mother of Bhairo Yadav who is said to have been kidnapped and traceless. According to this witness Arbind Yadav and Bhairo Yadav were sitting at her Darwaza and at that time she was feeding her catties. The accused persons came there and they took away Bhairo Yadav and killed Arbind Yadav at her house only. She has admitted that she is residing in a separate house and it is not the house of Suresh Yadav, (P.W.4). She has also stated that the house of Bholi Yadav (P.W. 10) is south from her house and it is in the back of the house of Anandi Yadav.

10. P.W. 9 Vakil Yadav has admitted that he was not examined by the police during investigation and for the first time he came to depose in court. PW. 9 has also claimed to be the eye witness of the first part of occurrence. According to this witness occurrence took place at Darwaza of PW. 4 and PW. 10, where he alongwith other witnesses was sitting and warming up. The accused persons came and started pulling Bholi Yadav. (P.W. 10) Tunna Yadav fired at Bholi Yadav and the accused persons took away Arbind Yadav and Bhairo Yadav. Arbind Yadav was fired at Milki Tand and his dead body was lying there. He has also stated that he along with Bholi Yadav and others went to police station where fard beyan was recorded. He put his thumb impression on the statement. The police recorded his statement and the statement of others at village. A suggestion has been given to this witness that he was not present in the village on the date of occurrence as he used to reside at Delhi which has been denied though he has accepted that he used to reside at Delhi. The presence of P.W. 9 at the time of occurrence becomes doubtful as per his own evidence that his statement was not recorded by the police during investigation and for the first time he came to depose in the court but P.W. 13 has stated in his evidence, that on 19.11.96 he recorded evidence of P.W. 3, 4, 5, 8 and 9.

11. P.W. 10 is the informant. From the cross examination it is revealed that he has got long criminal history. P.W. 10 has stated that in the night of 18.11.1996 he was at his house and warming himself near Ghura. He was chatting with others when the accused persons came armed with fire arms. They surrounded all those persons who were sitting there. He wanted to resist them, in the meantime Tunna Yadav fired from his gun. Some of the pellet hit Arbind Yadav and he also received the pellet injury. He raised alarm, but the accused persons forcibly took away Arbind Yadav and Bhairo Yadav. He alongwith others searched for Arbind Yadav and Bhairo Yadav. In course of search the dead body of Arbind Yadav was found in the paddy field. The dead body was brought on cot at the Darwaza of Upendra Yadav. The occurrence took place as he refused to pay Rangdan to Tunna Yadav, which was being demanded due to purchase of two

kathas of land. The accused persons thereafter set fire to the houses of Naresh Yadav, Sushil Yadav and Umesh Yadav and instituted a false case against him and prosecution witness. He was also threatened by the accused persons of dire consequences if information would be given to the police station. PW. 10 has admitted his involvement in criminal cases. This witness has contradicted the evidence of PW. 3, PW. 4, PW. 7, PW. 8 and PW. 9 that after the occurrence PW. 10 alongwith others had gone to police station where his fard beyan was recorded and he put his L.T.I. He has stated that the police recorded his fard beyan at his darwaza at 3 A.M. in the morning. He had shown his injury to the I.O. and he was sent by the I.O. to the hospital for his treatment alongwith constable. According to this witness the dead body of Arbind Yadav was brought at the Darwaja of Upendra Yadav at 8.30 in the night and he remained sitting near the dead body since 8.30 to 3.30 in the morning. His father P.W. 4 was also sitting with him. The I.O. came at Darwaja of Upendra Yadav. He was sent by the I.O. to Alamganj for his treatment but as the doctor was not present there he was sent to Sultanganj. He reached Sultanganj at 11 A.M. He was being accompanied by Ram Yadav and Manoj Sao. He was relieved by the doctor after giving treatment and he came back to his village on the same day about 12 noon. He has denied the suggestion that the house of the accused persons were set on fire by him and Arbind Yadav died receiving fire arm injury which was opened by his own man.

12. The evidence of P.W. 10 is in total contradiction of the evidence of P.W. 3, P.W. 4, P.W. 7, P.W. 8 and P.W. 9. All these witnesses have stated that P.W. 10 had gone to police station in the night itself. The dead body was recovered after search at 11 P.M. In the night itself at the police station the fard beyan of P.W. 10 was recorded and he put his L.T.I. P.W. 4 has stated that PW. 10 was sent for his treatment to hospital from the police station. PW. 10 remained admitted there for four days and after 5 days he returned to the village. Considering the contradictory evidence of prosecution witnesses it is very difficult that whose evidence is to be disbelieved and discarded as false and evidence of which witness is to be relied. Admittedly all the witnesses are related and they are inimical. Their enmity is for two reasons. Firstly there is land dispute. Secondly they have been made accused in the counter case filed by Sushil Yadav with regard to setting fire to the house of Sushil Yadav and others. F.I.R. and fard beyan has been exhibited by the defence as Ext. A and Ext. B. Evidence of PW. 10 as well as other witness that Bholi Yadav (PW. 10) had received fire arm injury as Tunna Yadav shot from his gun is contradicted by the evidence of PW. 12 and PW. 13 who are I.O. of this case.

13. PW. 13 is the I.O. of this case. He visited the place of occurrence as shown by P.W. 4 but he found no blood at the place of occurrence. He prepared inquest report recorded statement of PW. 3, 4, 5, 8 and 9 and obtained post-mortem report. In his evidence PW. 13 has stated that he received information of the incident from Chowkidar who came at the police station. PW. 13 has stated that he was not shown any injury PW. 10 on his person. P.W. 13 has also stated that

he was not shown the place where the witnesses were warming themselves near Ghura. PW. 13 has not clearly stated that at which place he recorded the fard beyan of PW. 10, simply it has been stated that P.W. 10 put his L.T.I. on his fard beyan PW. 13 has stated that the Chowkidar came alone to give information at the police station. He has stated that he did not inspect the first place of occurrence i.e. the house of Bholi Yadav. He only inspected the place where the dead body was lying on the cot i.e. the house of Upendra Yadav. P.W. 13 has stated that PW. 7, 8 and 9 have not stated before him that all witnesses were present when the accused persons had come and in their presence the fire was opened by Tunna Yadav. He also denied that all the witnesses stated before him that the occurrence took place because Tunna Yadav was not paid Rangdari tax.

14. PW. 12 is the second I.O. He took charge of investigation on 28.12.1997. He has stated that he recorded the statement of Chowkidar, PW. 6 who had made similar statement as he has depos in the court. PW. 12 also did not inspect the first place of occurrence. Regarding the injury on the person of PW. 10, PW. 12 has stated that he made attempt to procure the injury report of PW. 10. He visited the hospital where it is said that PW. 10 was admitted and treated, inspected the record, but there was nothing in the record to show that PW. 10 was treated as indoor patient.

15. One important aspect of this case is that independent witnesses PW. 1, 3 and 5 have not supported the case of the prosecution. They have been declared hostile. PW. 5 has been cross examined by the prosecution. This witness has stated that in the morning he saw that the dead body of the son of Yogendra Yadav was lying at the darwaza of Upendra Yadav he enquired from the people assembled there, but no one disclosed regarding the manner of occurrence or the name of the accused. He has stated that in the night at 8-9 P.M. suddenly the sound of firing started coming, he came out of his house and came at the place of occurrence. He saw that firing and counter firing was going on in between the accused and in the informant in Milki Tand. At this time people started shouting that Arbind Yadav has been killed and Bhairo Yadav has been taken by Tunna Yadav and others. He has also stated that in the morning Bholi (P.W. 10) Wakil, (PW. 9) Suresh (PW. 4) and Sanjay Yadav (PW. 3) were at the house of Upendra Yadav, but they did not disclose name of any accused. From the cross examination of this witness totally a new case has come of which the manner of occurrence, place of occurrence as well as everything has been changed. He has also falsified the claim of the prosecution witness that the accused persons came at the house of PW. 4 and from there they had forcibly taken away the deceased and fired at him. Evidence of PW. 5 has been supported by PW. 6 Chowkidar who has not been declared hostile.

16. PW. 10 in his evidence has stated that Arbind Yadav died on account of fire arm injury as well as by strangulation, which is contradicted by the evidence of the doctor PW. 11.

17. PW. 11 has conducted the postmortem on the dead body of the deceased.

PW. 11 has stated that he did not find any injury present on the neck of the deceased. He found multiple elliptical abrasion measuring 1/2" C.M. 1.3. C.M. present on outer aspect of right arm and right side of chest in the axilla. On opening the chest right chest cavity was found filled with blood and blood clots. Several small punctures were seen in right lung. Four metallic pellets were found embedded in right lung which were taken out and handed over to constable under sealed cover. Chambers of both side heart were empty. According to PW. 11 the injuries were ante-mortem, grievous and dangerous to life in ordinary course of nature caused by fire arm. PW. 11 did not find any other injury except the injury caused by fire arm. The evidence of PW. 11 also contradicted the evidence of PW. 8 the mother of the deceased that the deceased had not taken his meal before the occurrence; PW. 11 the doctor found partially digested food in his stomach.

18. Counsel appearing for the appellants advancing his argument regarding appreciation of evidence adduced by the prosecution witness has stated that the prosecution has failed to prove the place of occurrence and manner of occurrence. The motive as suggested by the informant is also not proved because in the cross examination of the witnesses it has come that the alleged purchase was made long back and the matter had already been settled. There was no immediate cause for which any such occurrence could have taken place at the instance of the accused persons. It has been submitted that the prosecution has not been able to prove actually when at which place occurrence took place. PW. 3, 4 and 9 have stated that the first part of occurrence took place at the house of PW. 4. PW. 7 has stated that it took place at her house, but PW. 8 has claimed that the occurrence took place at her house. A totally new place of occurrence has been introduced by PW. 5 in his cross examination. He has shifted the place of occurrence to Milki Tand. So far the claim of the prosecution witness that they have witnessed first part of the occurrence is falsified from their own evidence when they have shifted the place of occurrence from one place to another. None of the witnesses have stated that all those witness who claimed to be present at the time, when accused persons came and opened fire were present there, though all are claiming that they were present. This makes it clear that the witnesses who are related, interested and inimical have tried their best to implicate their common enemy i.e. the appellants. In their attempt to get the accused persons any how convicted. The witnesses have come out with their own story which is not consistent with the evidence of other witnesses. This contradiction in evidence is sufficient for doubting the truthfulness and trustworthiness of the witnesses. The evidence of so called eye witnesses is more doubtful because none of them have been named as eye witnesses in the F.I.R. In the F.I.R, silence has been maintained just in order to substitute names of such persons, who are interested and inimical, and who will blindly support the prosecution story claiming to be eye witness so that the accused persons could be convicted. Counsel appearing for the appellants has further submitted that the presence of PW. 10 the informant become doubtful

from his own fard beyan ,as well as the evidence of PW. 3, 4, 7 and 9. They are the witnesses who have supported the statement of PW. 10 in his fard beyan that he received pellet injury at the place where accused came and occurrence i.e. the house of PW. 4. No such injury report was produced by prosecution, this evidence of interested witness has been totally demolished by the evidence of PW. 12 and PW. 13. PW. 13 has stated that PW. 10 did not show him any injury on his chest at the time when he recorded his fard beyari. PW. 1 has stated that he had shown his injury to I.O. who sent him for his treatment to the hospital alongwith constable. PW. 13 has totally denied that he found any injury on the person of PW. 10 and he sent him for his treatment to the hospital.

19. PW. 12 in his evidence has stated that he tried to procure injury report of PW. 10 from that hospital where he is said to have been admitted for his treatment. The records of that hospital did not disclose that any such person was admitted and treated. Just to cover up this lacuna on the part of the prosecution, PW. 10 has contradicted the evidence of PW. 4 who is his father as well as the evidence of PW. 3, his nephew and evidence of PW. 9 who is relative, Who have stated that from the police station PW. 10 was sent for his treatment to the hospital. He remained admitted there for 3-4 days and came back after five days. Since no injury report could be procured by the prosecution PW. 10 contradicted the evidence of other witnesses and has stated that he was sent to the hospital for treatment, but he was released on the same day after giving treatment and same day he came to the village. There is so much contradiction in prosecution evidence that it is difficult to decide which witness is truthful and which has come with a false story. This creates doubt against the truthfulness of all the witnesses.

20. Another argument advanced by the appellants counsel is that the F.I.R. on the basis of which the prosecution case has been initiated is not the genuine F.I.R. It is an F.I.R. instituted subsequently after due deliberation and concoction. This objection raised by the appellant can be considered by discussing the evidence of prosecution witnesses. P.Ws. 3, 4, 7, 8 and 9 all have stated that the dead body of Arbind Yadav was searched and recovered some time in between 8-10. His dead body was kept at the Darwaza of Upendra Yadav and thereafter PW. 10 along with PW. 3, 4 and 9 went to the police station. At the police station his fard beyan was recorded. He put his L.T.I. on the fard beyan. PW. 4 has stated that his statement was also recorded at the police station subsequent to that the I.O. along with police party came to the village with them and thereafter investigation proceeded. This evidence of P.W. 3, 4 and 9 have been denied by PW. 10. PW. 10 has stated that in the night of occurrence since at 8.30 till 3-4 A.M. he remained present with the dead body. His father PW. 4 also remained with him till the I.O. came at the place of occurrence. PW. 7 and 8 have also stated that Bholi Yadav alongwith other witness had gone to police station. PW. 4 has gone to the extent of saying that the dead body was kept at the darwaza of Upendra Yadav under the protection of the personal security of the Inspector of Sultanganj. He along with PW. 10 went to the police station. PW. 10 from police station itself was sent to hospital for his treatment. PW. 10 came back to the

village after five days. This is serious contradictions and it creates doubt the genuineness of the F.I.R. According to PW. 10 his fard beyan was recorded at his residence in the village. PW. 13 has stated that information was given to him at the police station by Chowkidar who had come alone and on his information he went to village and recorded fard beyan. There is so much contradiction that it is difficult to decide whether the F.I.R. which according to PW. 3, 4, 7, 8 and 9 was recorded at the police station has been concealed and in its is placed after due and deliberation and conspiracy another F.I.R. has been instituted on concocted and fabricated facts.

21. Contradictions which have been indicated by the counsel for the appellants is sufficient to create doubt regarding the prosecution story, truthfulness of the witnesses, place of occurrence and the manner of occurrence, doubt and makes the prosecution case doubtful.

22. Considering the aforesaid facts and circumstances, I am unable to hold that the conviction of the appellants should be affirmed, rather I am of the view that the contradictions are so serious that the conviction of the appellants must be set aside.

23. So far the conviction of the appellants u/s 364 I.P.C. is concerned, there is no convincing evidence on record. It has not been stated that actually who is responsible for kidnapping of Bhairo Yadav. Simply it has been stated that the Bhairo Yadav was taken away and since then he is traceless. The evidence which is on record is not sufficient for conviction of the appellants u/s 364A I.P.C. Accordingly the conviction of the appellants u/s 364/149 I.P.C. and Sections 302/149 and 148 I.P.C. is set aside. The Judgment of conviction passed by the trial court as well as the sentence awarded to the appellants is set aside, both the appeals are allowed. All the five appellants are in jail, they are directed to be released forthwith if not wanted in any other case.

M.L. Visa, J.

I agree.