

(1999) 09 PAT CK 0058

In the Patna High Court

Case No : Criminal Appeal (DB) No. 62 of 1987

Mahadeo Sahni and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 22-09-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 323

Citation : (2000) 1 PLJR 401

Hon'ble Judges : R.N. Prasad, J;M.L. Visa, J

Bench : Division Bench

Advocate : Tara Kant Jha and Bindhya Keshri Singh, for the Appellant; Ashwini Kumar Sinha for the State, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Visa, J.—These two appeals are being disposed of by this common judgment because they arise out of same judgment and order dated 12th January, 1987 passed by 1st Additional Sessions Judge, Sitamarhi, in Sessions Trial No. 181 of 1984/63 of 1984 convicting and sentencing all the appellants to undergo life imprisonment u/s 302 read with section 149 IPC. Appellant Gagandeo Sahni, Sham Nandan Sahni and Naga Sahni have further been convicted and sentenced to undergo R.I. for three years u/s 148 IPC and the remaining appellants have further been convicted and sentenced to undergo R.I. for two years u/s 147 IPC. The sentences passed against them have been ordered to run concurrently. The case of the prosecution as disclosed in the Fardbeyan is that on 8.5.84 at about 11.30 P.M. informant Munar Mahto (PW 8) (Munar Sahni, at one place in Fardbeyan) went to Tariyani Chowk Police Station within the district of Sitamarhi and lodged an FIR (Ext.3) stating therein that on the same day at about 3 P.M. he along with his father Gajar Mahto, uncle Bitin Mahto, Ram Bilas Mahto (PW 4) and Ram Chandra Mahto (PW 2) had gone to Turki Bazar. Appellants Jiya Lal Sah and Gagandeo Sah had also gone to Turki Bazar and in the market where ever the informant and his men went they both kept watch on them after staying at

some distance. After marketing when the informant and his men started for their house, appellants Jiya Lal Sah and Gagandeo Sah proceeded ahead of them. When the informant and his men reached a village footpath, going towards Ladaura Mahinwara near the field of one Bharat Singh in Nandna Sareh situated at Village Kumhrar, all of a sudden all the appellants came from a maize crop field and started assaulting the father of the informant who was going ahead of the informant and his remaining companions. Appellant Gagandeo Sah and Mahadeo Sahni ordered their companions to kill all even if their lands were sold and on this instigation appellant Rajendra Sahni started assaulting the father of the informant with a lathi and appellant Naga Sahni with a Dabiya (a sharp cutting weapon). When Bitin Mahtc, uncle of the informant, tried to rescue the father of the informant he was assaulted by appellant Gagandeo Sahni with a Garasa and he, after receiving injuries, fell down. Appellant Bachu Sahni thereupon started assaulting the father and uncle of informant with a "Phatha" (bamboo stick) and appellant Shyam Nandan Sahni started assaulting the uncle of the informant with a dagger. Appellant Rajan Sahni and Binod Sahni by putting lathis on both sides of the neck of the father of the informant pressed their lathis and remaining appellants started indiscriminately assaulting the father and uncle of informant with lathis saying that when they had identified them they would finish them. Informant, Ram Chandra Mahto (PW 2) and Ram Bilas Mahto (PW 4) out of fear were watching the occurrence from some distance. It was a moonlit night. When the informant raised hulla villagers namely, Mitan Mahto, Phul Shankar Mahto (none of them examined), Ram Ekbal Mahto (PW 6) and Mohan Mahto (PW 5) replied that they were coming and after hearing their replies, the appellants fled away but appellant Musafir Sahni was caught and he was assaulted by the mob who had caught him. The informant found that his father and uncle had died. About the motive of occurrence the informant stated that in the last month of "Magh" Ganeshi Sahni, father of appellants No. 1, 2 and 3 of both the appeal, after constructing a house by encroaching a road near his house had closed the passage and the villagers of Mahto community had asked Ganesh Mahto to remove the house from the road and a complaint was lodged with the Anchaladhikari and since then tension between Mahto (Kurmi) and Sahni communities cropped up and thereafter Ganesh Sahni got a case of assault lodged against the informant and others by appellant Jiya Lal Sahni. On last Saturday when there was drizzling, appellant Mangal Sahni entered the house of Shambhu Mahto for committing theft and when he flashed a torch he was seen by Shambhu Mahto who raised alarm on which appellant Mangal Sahni tried to run away but he was caught by father and uncle of informant. As nothing was stolen Mangal Sahni was let off after some assault. Mangal Sahni after release went to his village where all members of Sahni community assembled and gave out that they would finish the existence of kurmis and since then they were always accusing the informant and his party as thieves and were making attempts to get them arrested by police. S.I. of Police Bhagirath Mishra (PW 9) after lodging the FIR took up the investigation of the case and proceeded to the place of occurrence where he reached at 3.30 P.M. on

9.5.84. He prepared inquest report (Exts. 4 and 4/1) of the dead bodies of Gajar Mahto and Bitin Mahto, sent the dead bodies for post mortem examination, collected blood stained soil from the place of occurrence and prepared seizure list (Ext.5). During the course of investigation appellant Naga Sahni confessed his guilt and produced a blood stained "dabiya" before the I.O. and in house search a blood stained Garasa from the house of Gagandeo Sahni and a blood stained lathi from the house of Rajendra Sahni were recovered. Production list (Ext.6) and seizure lists (Exts. 6/1 and 6/2) were prepared. The I.O. sent the blood stained dabiya, grasa and lathi to Forensic Science Laboratory and after recording statements of witnesses and completing the investigation submitted chargesheet against all the appellants under sections 147, 148, 149 and 302 IPC.

2. After commitment of the case to the court of Sessions charges u/s 302 and u/s 302 read with section 149 IPC were framed against all the appellants. Appellants Gagandeo Sahni, Shyam Nandan Sahni and Naga Sahni were further charged u/s 148 IPC and remaining appellants u/s 147 IPC. After trial appellants were found not guilty, u/s 302 IPC and they were exonerated for this charge but they were found guilty u/s 302 read with section 149 IPC. Appellants Gagandeo Sahni, Shyam Nandan Sahni and Naga Sahni were further found guilty u/s 148 IPC and remaining appellants u/s 147 IPC. Accordingly appellants were convicted and sentenced as indicated above.

3. Altogether 9 witnesses have been examined on behalf of the prosecution. Informant Munar Mahto (PW 8), Ram Chandra Mahto (PW 2) and Ram Bilas Mahto (PW 4) are said to be eye witnesses to the occurrence. Phul Shankar Mahto (PW 6) and Ram Ekbal Mahto (PW 7) are witnesses who after hearing hulla raised by the informant had reached the place of occurrence and along with others had caught appellant Musafir Sahni after chase and had seen the dead bodies of both the deceased and were told about the occurrence by the informant. Mohan Mahto (PW 5) although declared hostile by the prosecution is a witness who had reached the place of occurrence on hearing hulla raised by informant and had seen the appellant Musafir Sahni being caught after chase and had seen the dead bodies of father and uncle of informant and had put his signature on inquest report. Inderdeo Mahto (PW 1) is a witness on seizure list prepared by the I.O. after collecting blood stained earth from the place of occurrence and is also a witness in whose presence blood stained grasa from the house of appellant Gagandeo Sahni, a blood stained lathi from the house of Rajendra Sahni and a blood stained dabiya from the house of appellant Naga Sahni were recovered. Bishwanath Bijoria (PW 3) is the doctor who had conducted autopsy on the dead bodies of father and uncle of informant. Bhagirath Mishra (PW 9) is the I.O.

4. Bishwanath Bijoria (PW 3) in his evidence has stated that on 10.5.84 he was posted at Sitamarhi Sadar Hospital as Civil Assistant Surgeon and on that day at about 1.35 P.M. he conducted post mortem examination on the dead body of Bitin @ Jagdish Mahto and found the following ante mortem injuries on the dead

body :

- (i) Lacerated wound 1 1/4"x 1/3"x scalp deep on left side of occipital region.
- (ii) Lacerated wound 1 1/4"x 1/4"x scalp deep on left side of occipital region.
- (iii) Incised wound 1 1/2"x 1/4"x scalp deep on left side of forehead
- (iv) Lacerated wound 1 1/4"x 1/3"x scalp deep on left parietal region.
- (v) Incised wound 1"x 1"x scalp deep on left temporal region behind left ear.
- (vi) Lacerated wound 1 1/2"x 1/4"x scalp deep on left temporal region behind left ear.
- (vii) Lacerated wound 2"x 1/4"x scalp deep on left side of occipital region.
- (viii) Bruise 3 1/2"x 3/4" on back of left side of chest.
- (ix) Bruise 4 1/2"x 1" on back of left side of chest.
- (x) Bruise 4"x3/4" on back of right side of chest.
- (xi) Bruise 2"x3/4" on back of right side of chest.

According to him, injury nos. (iii) and (v) were caused by a sharp cutting weapon which may be "chhura" or "garasa" and remaining injuries were caused by hard blunt substance which may be lathi or "phatha" and time elapsed since death was within 36 to 60 hours approximately. He has stated that rigor mortis was absent and death was caused by shock and haemorrhage due to aforesaid injuries. He has further stated that on the same day at 2.10 P.M. he conducted post mortem examination on the dead body of Gajar Mahto and found the following ante mortem injuries:

- (i) Incised wound 2"x1/4"x1/4" just below chin.
- (ii) Lacerated wound 1 1/2"x1/3" x1/4" on the right side of chin.
- (iii) Lacerated wound 1"x1/4"x1/4" on the right side of mandible area below right angle of mouth.
- (iv) Incised wound 3/4"x1/5"x1/5" on the right side of mandible region.
- (v) Lacerated wound 1 1/2"x1/2"x scalp deep on mid parietal region.
- (vi) Lacerated wound 1 1/2"x1/2"x scalp deep on occipital region.
- (vii) Lacerated wound 1 1/4"x1/2"x1/2" at cleft between ring finger and middle finger of right hand,
- (viii) Bruise 3 1/2"x3/4" on lower part of front of left side of chest.
- (ix) Bruise 4"x1" on lower part of chest and upper part of abdomen.
- (x) Bruise 1 1/4"x1" just right side of chest in front region.

- (xi) Bruise 3"x3/4" anterior surface of right thigh.
- (xii) Bruise 2"x3/4" on anterior surface of right thigh.
- (xiii) Bruise 3 1/2"x1" on mandible side of left thigh.
- (xiv) Bruise 1 1/2"x1/2" in front of neck.

About the aforesaid injuries, injury nos. (i) and (iv), in the opinion of the doctor, were caused by a sharp cutting weapon which may be dabia and rest injuries were caused by hard blunt substance which may be lathi and bhala and time elapsed since death was 36 to 46 hours approximately. Rigor mortis was absent and death was caused by shock and haemorrhage due to aforesaid injuries.

5. The medical evidence supports the case of the prosecution that both the deceased died of injuries caused by weapons such as dagger, "garasa" and "dabia" and by hard blunt substance which may be lathi and phatha. It also supports the time of death of both the deceased as given by the prosecution. So the medical evidence on record proves that death of both the deceased was homicidal.

6. Munar Mahto (PW 8), the informant, in his evidence has stated that on alleged date of occurrence he along with Ram Chandra Mahto (PW 2) Ram Bilas Mahto (PW.4) and his father and uncle had gone to Turki Bazar for marketing and in the market appellants Jiya Lal Sah and Gagandeo Sah were keeping watch on them. From market he and his companions started for their house. Appellants Jiya Lal Sah and Gagandeo Sah proceeded ahead of them and when his party reached a village footpath near the field of one Bharat Singh in Nandan Sareh all the appellants who were hiding in a maize crop field, all of a sudden came out and pounced upon them and appellant Rajendra Sahni started assaulting the father of informant with lathi. Appellants Mahadeo Sahni and Gagandeo Sahni gave out that let their 40 bighas of land be sold but the informant and members of his party be finished and thereafter appellants started assaulting the father of the informant. Appellant Rajendra Sahni assaulted the father of informant with lathi and when his uncle Bitin went to rescue him appellant Gagandeo Sahni gave a garasa blow on his head as a result of which Bitin fell down and thereafter appellant Shyam Nandan Sahni started giving dagger blows on him. Appellant Naga Sahni gave blows by dabia on the father of informant and appellants Binod Sahni and Rajan Sahni by pressing the neck of the father of informant with lathis caused his death. Remaining appellants assaulted the father and uncle of informant with lathis and phathas. He raised alarm that his father and uncle were being assaulted by Rajendra Sahni on which witnesses, namely, Ram Ekbal Mahto (PW 7), Mohan Mahto (PW 5), Phul Shankar Mahto (PW 6) and others came there and appellants, started running away but appellant Musafir Sahni was caught after chase. He found that his father and uncle had already died. He has further stated that his fardbeyan was recorded by police and appellant Musafir Sahni was handed over to police. About the genesis of occurrence he has stated that in the month of Magh Ganeshi Sahni had constructed a house after

encroaching a land situate near his previously existing house on which he, both the deceased and other villagers had raised objection and asked for removal of encroachment and at that time appellant Rajendra Sahni who is son of Ganeshi Sahni had assaulted them and a complaint before the Circle Officer was also lodged. Appellant Rajendra Sahni got a case of assault filed against the informant and others through Jiya Lal. The informant has further stated that appellant Mangal Sahni had entered the house of one Shambhu for committing theft and he was caught by the uncle of informant but he was let off after some assault and thereafter the appellants held a meeting and conspiring with each other assaulted his party.

7. Ram Chandra Mahto (PW 2) and Ram Bilas Mahto (PW 4), both the eye witnesses to the occurrence, have supported the evidence of informant. Ram Chandra Mahto (PW 2) has said that on the date of occurrence he along with the informant, Ram Bilas Mahto (PW 4) and both the deceased had gone to Turki Bazar for marketing where he found that appellants Jiya Lal Sah and Gagandeo Sah were keeping watch on them and after marketing they started for their house and at that time appellant Jiya Lal Sah and Gagandeo Sah proceeded ahead of them and when at about 8 P.M. they reached a village foot-path near the field of one Bharat Singh in Nandan Sareh, all the appellants who were hiding in a maize field all of a sudden came out from that field and appellant Rajendra Sahni hurled lathi on deceased Gajar Mahto. When he went to rescue he was also assaulted by appellant Rajendra Sahni on his right hand and he then went in a field of maize crop. He has also stated that appellants Gagandeo Sah and Mahadeo Sahni gave out for killing him and his companions and further held the threat that they would fight after selling their lands. He has stated that deceased Gajar Mahto was assaulted by Shyam Nandan Sahni with a chhura, by Mahadeo Sahni with a phatha and by Siya Ram Sahni, Rajan Sahni and Binod Sahni with lathis and when Bitin went for his rescue he was assaulted by appellant Gagandeo Sahni with a garasa and he was further assaulted by appellant Bachchu Sahni with phatha, by appellants Mangal Sahni, Lalan Sahni, Jiya Lal Sah, Gagandeo Sah. Musafir Sahni with lathis and by appellant Naga Sahni with a Dabia. He has also said that after receiving injuries when both the deceased fell down all the appellants assaulted them and appellants Rajan and Binod Sahni by pressing the neck of Gajar Sahni with lathis committed his murder. He has added that when hulla was raised by the informant and his party villagers reached there and Musafir Sahni started running towards east of the village but he was caught by villagers after chase and he thereafter found that the dead bodies of Gajar and Bitin Mahto were lying at the place of occurrence. About the genesis of occurrence he has stated that Ganeshi Sahni after encroaching the public land had constructed the house against which members of the kurmi community had lodged complaint before the Anchaladhikari and since then two groups were formed in the village and tension was there between the two groups. The another reason as given by him is that about 4 days before the occurrence appellant Mangal Sahni had entered the house of one Shambhu

Mahto for committing theft but he was caught by both the deceased and others but he was let off after giving 2-4 slaps and thereafter the members of Sahni community had taken a vow that they would finish the members of Kurmi Community. From the evidence it appears that while giving the names of the appellants, who according to him, came out from the maize crop field he has not named the appellant Shyam Nandan Sahni but in subsequent statements he has named this appellant and has stated that this appellant assaulted the deceased Gajar Mahto with a dagger. In this view of the matter, so far as the presence and participation of appellants at the time of occurrence is concerned, this witness has named all the appellants. Ram Bilas Sahni (PW 4) has also said that at the time of occurrence when he along with informant, Ram Chandra Mahto (PW 2) and both the deceased was returning to his house from Turki Bazar where they had gone for marketing and when they reached Nandan Sareh near the field of one Bharat Sah, all the appellants all of a sudden came out from a maize crop field and started assaulting them. About the assault he has said that appellant Rajendra Sahni assaulted the deceased Gajar Mahto with lathi. Appellant Shyam Nandan Sahni with Chhura and appellant Naga Sahni with Dabia assaulted the deceased Gajar Mahto. When Bitin went to rescue Gajar Mahto he was also assaulted by appellant Gagandeo Sahni with garasa. According to him, all the appellants assaulted both the deceased when they fell down and appellant Binod Sahni by pressing the neck of Gajar Mahto between lathis caused his death. There is discrepancy in the evidence of PW 2 and PW 4 regarding assault by appellant Shyam Nandan Sahni by means of dagger. They both have stated that appellant Shyam Nandan Sahni assaulted Gajar Mahto with dagger whereas the case of prosecution is that this appellant had assaulted deceased Bitin with dagger. Again PW 2 has stated that appellant Naga Sahni had assaulted deceased Bitin with Dabia which is against the case of prosecution that appellant Naga Sahni had assaulted deceased Gajar Mahto with Dabia. In our opinion these discrepancies are minor in nature. When as many as fourteen persons variously armed with different types of weapons resort to assault on a number of persons such type of discrepancies are bound to occur in the evidence of witnesses. This is supported by the fact that when the defence wanted to bring the contradiction in the earlier statements and evidence of PW 2 by cross examining the I.O., it was stated by I.O. that in his earlier statements PW 2 had stated that appellant Shyam Nandan Sahni had given dagger blow to deceased Bitin. This is what the prosecution case is on this point. The evidence of PW 2 and PW 4 fully supports the case of the prosecution that at the time of occurrence appellant Naga Sahni was armed with Dabia and appellant Shyam Nandan Sahni was armed with a dagger and they both used these weapons in assaulting the deceased persons. Notwithstanding this discrepancy of quite a minor nature, the evidence of informant is fully supported by the medical evidence that appellant Naga Sahni had inflicted Dabia blow to deceased Gajar Mahto and appellant Shyam Nandan Sahni had inflicted dagger blow to deceased Bitin. Phul Shankar Mahto (PW 6) and Ram Ekbal Mahto (PW 7) in their evidence have stated that at the time of occurrence on hearing hulla, they ran to the place of occurrence. PW 6 has said

that in the way he met the informant, PW 2 and PW 4 and the informant told him that his father and uncle had been killed and also told that one of the assailants was running away towards east and south and he along with others chased that man and caught hold of him and he was appellant Musafir Sahni and thereafter he went to the place of occurrence where he saw the dead bodies of both the deceased and informant disclosed him names of appellants namely, Rajendra Sahni, Gagandeo Sahni, Mahadeo Sahni, Shyam Nandan Sahni, Siya Ram Sahni, Binod Sahni, Jiya Lal Sah, Gagandeo Sah, Naga Sahni and Musafir Sahni and also told him that appellant Rajendra Sahni had assaulted the deceased Gajar Mahto with lathi. Gagandeo Sahi assaulted the deceased Bitin by garasa, appellant Rajan and Binod Sahni pressed the neck of the deceased Gajar Mahto with lathis and he also said that dabia was also used in the assault and appellant Shyam Nandan Sahni had assaulted Bitin with dagger. Ram Ekbal Mahto (PW 7) has said that after hearing hulla when he went towards the place of occurrence he found one man running away and he and others after chase caught him and he was appellant Musafir Sahni and thereafter he found the dead bodies of Gajar Mahto and Bitin Mahto and informant told him that appellants, namely, Rajendra Sahni, Gagandeo Sahni, Mahadeo Sahni, Shyam Nandan Sahni, Rajan Sahni, Binod Sahni, Siya Ram Sahni, Jiya Lal San, Gagandeo Sah, Mangal Sahni, Bachu Sahni and Lallan Sahni had committed the murder. It is true that PW 6 has not stated the names of appellants Lalan Sahni, Mangal Sahni, Bachu Sahni and Rajan Sahni and similarly PW 7 has not stated the names of appellants Naga Sahni and Musafir Sahni amongst those persons whose names were disclosed to them by informant as assailants but then PW 7 has clearly stated that when he reached the place of occurrence he found appellant Musafir Sahni running away who was caught at the spot. About the names of some appellants which do not find place in the list of names of persons disclosed to them by informant as assailants this circumstance does not affect the case of prosecution because admittedly they are hearsay witnesses and all the eye witnesses including the informant have named all the appellants taking part in the occurrence.

8. Bhagirath Mishra (PW 9), the I.O. has stated that on 8.5.84 he was posted as Jr. S.I. of Police at Tariyani Chauk PS. and on that day informant came to his police station and lodged FIR and he took up the investigation of the case and reached the place of occurrence early in the morning at about 3.30 A.M. and prepared the inquest reports (Exts. 4 and 4/1) and sent the dead bodies for post mortem examination. According to him, the P.O. is a field of Bharat Singh in Nandan Sareh and at the ridge of this field there is a village footpath running between Subhaigarh and Turki Bazar. He found the dead bodies of both the deceased in Plot No. 37 situate south to this foot-path at a distance of about 10 yards and heads of dead bodies were touching this foot path. He also found a maize crop field in plot no. 30 towards North of this foot path. He found blood in abundant quantity at the place of occurrence and seized blood stained soil in presence of witnesses and prepared seizure list (Ext.5). He has further stated that appellant Musafir Sahni who was caught at the P.O. by the villagers was

handed over to him and he took him in his custody and received information that appellant Naga Sahni was hiding in Mushar Tola and he went there and recorded his statement who confessed his guilt and admitted that he had kept a dabiya concealed in his house and then he went to the house of Naga Sahni along with him and Naga Sahni brought a blood stained dabiya and he prepared production list (Ext.6). He searched the house of Gangandeo Sah from where a blood stained garasa was recovered and he prepared seizure list (Ext.5/1) and from the house of appellant Rajan Sahni a blood stained lathi was recovered which was also seized and seizure list (Ext.5/2) was prepared. He then sent the blood stained dabiya, garasa and lathi to Forensic Science Laboratory. Inder Deo Mahto (PW 1) in his evidence has stated that in his presence the I.O. had seized blood stained earth from the place of occurrence and prepared a seizure list on which he put his signature (Ext.1). He has further stated that in his presence the I.O. had recovered a blood stained garasa from the house of Gangandeo Sahni, a blood stained lathi from the house of Rajan Sahni and a blood stained dabiya from the house of appellant Naga Sahni and seizure lists were prepared on which he had put his signatures (Ext.1/1, 1/2 and 1/3).

9. From the evidence of informant, PW 2 and PW 4 who are eye witnesses to the occurrence we find that they have consistently supported the case of the prosecution that all the appellants took part in the assault to both deceased who died owing to injuries inflicted by appellants. Their evidence is further supported by medical evidence as well as by the evidence of PW 6 and PW 7 who had reached the place of occurrence after hearing hulla. Mohan Mahto (PW 5) who has been declared hostile by the prosecution has also stated that at the time of occurrence after hearing hulla when he ran towards the place of occurrence he found appellant Musafir Sahni running towards east when he was chased and caught and he had seen the dead bodies of both deceased at the place of occurrence. He has also proved his signatures (Ext.1/4 and 1/5), signatures of Phul Shankar Mahto (Exts.1/8 and 1/9) on inquest reports. Because he has denied to have received information from the informant about the details of occurrence he has been declared hostile but on the point of apprehension of appellant Musafir Sahni and finding the dead bodies at the place of occurrence his evidence is in favour of the prosecution. Besides this, the case of the prosecution further finds support from the fact that a blood stained dabiya from the house of appellant Naga Sahni, a blood stained lathi from the house of Gagandeo and a blood stained garasa from the house of Rajan Sahni and a blood stained garasa from the house of Gagandeo Sah were recovered in presence of witnesses. On behalf of the appellants some documents have been brought on record. Ext.A is the certified copy of formal FIR. Ext.B is the certified copy of fardbeyan and Ext.C is the certified copy of chargesheet of a case under sections 147, 447, 323, 324 and 337 IPC filed by one Hitlal Sah against both the deceased, PW 2 and others. Ext.C shows that appellants Rajan Sahni, Gagandeo Sahni and Jiya Lal Sah were witnesses in that case. The case of the defence is that because of this case, they have been falsely implicated in the present case.

The informant in his evidence has admitted that when on the action of encroachment of public land and making the construction over it by Ganeshi a protest was raised by the villagers including the deceased, appellant Rajendra Sahni got the false case filed through Hitlal. In this case two persons from the side of prosecution party have been killed. It will be stretching the imagination beyond all probabilities if it is held that the appellants have been falsely implicated in this case of double murder by prosecution party because they had earlier filed a case against those two deceased, PW 2 and others. The enmity and strained relations between the parties are admitted and the informant has not made any attempt to conceal this fact. We find that the documents produced by defence do not lead to the conclusion that the appellants have been falsely implicated in this case.

10. Learned counsel appearing on behalf of the appellants has argued that Ram Chandra Mahto (PW 2) in his evidence has stated that appellant Shyam Nandan Sahni had assaulted the deceased Gajar Mahto with a "Chhura" but PW 9, the I.O. has stated that this statement was not given by him in his earlier statements and similarly he had not stated earlier that appellants Binod Sahni and Rajan Sahni had assaulted the deceased Gajar Mahto with lathi which is admitted by I.O. and therefore his evidence does not appear to be trustworthy. It is true that the I.O. has stated that PW 2 had not stated earlier that appellant Shyam Nandan Sahni assaulted the deceased Gajar Mahto with "Chhura" but had stated that appellant Shyam Nandan Sahni assaulted the deceased Bitin with "Chhura". The I.O. has further stated that although PW 2 did not state before him that appellants Rajan Sahni and Binod Sahni had assaulted the deceased with "lathi" but then he had stated that both these appellants had pressed the neck of deceased Gajar Mahto with lathi. Besides this, PW 2 in his evidence has clearly stated that when both the deceased after receiving injuries fell down all the appellants assaulted them. In this view of the matter, we do not find that the contradictions which the defence has tried to bring on record in the earlier statements and evidence of PW 2 are of such nature to discard his entire evidence. Notwithstanding this fact, the defence has not been able to bring on record any contradiction in the earlier statements and evidence of remaining eye witnesses to the occurrence.

11. Learned counsel appearing on behalf of the appellants has submitted that the I.O., in his evidence, has stated that he found the dead bodies of the deceased in Plot No. 37 which was a field of maize crop and occurrence is said to have taken place in the night at about 8 P.M. and PW 1 in his evidence has stated that at the time of occurrence he went in a maize crop field situate towards north of the field of one Bharat Singh and in this view of the matter, there was no chance of identifying any of the appellants and the evidence of prosecution witnesses that they identified the appellants does not appear true and it cannot be relied upon. It is true that the I.O. (PW 9) in his evidence has stated that he found the dead bodies of both the deceased in a field but he has also stated that the head of the body of the deceased Bitin was touching the village foot-path and it is the

consistent evidence of the prosecution witnesses that occurrence took place on a village foot-path near the field of Bharat Singh in Nandan Sareh. Besides this, all the eye witnesses to the occurrence have stated that it was the moonlit night at the time of occurrence. The defence has not given any suggestion to these witnesses on the point of identification of appellants by them.

12. Lastly, learned counsel appearing on behalf of the appellants has urged that at the time of occurrence the I.O. did not find any article said to have been purchased by the informant and his companions in the market and this circumstance belies the case of the prosecution that the prosecution party was returning from the market where they had gone to purchase some articles. We are unable to accept this argument. Besides, both the deceased, informant and PWs 2 and 4, as per the case of the prosecution, had gone to the market for purchasing articles. It is not the case of the prosecution that after the occurrence, informant and his other companions left the articles purchased by them at the place of occurrence. Moreover PW 1 in his evidence has stated that although he and his friends purchased the articles in the market but both the deceased did not purchase anything in the market. Further, whatever he had purchased remained intact with him and nothing was dropped in the way. In this situation, if the I.O. has not found any article purchased by prosecution party in the market at the place of occurrence, it will not be a ground for disbelieving the evidence of informant, PW 2 and PW 4 that at the time of occurrence they along with both the deceased were returning to their village from market.

13. Considering the entire evidence on record we find that prosecution has brought home the charges against the appellants beyond all reasonable doubts. In the result, both the appeals stand dismissed. The judgment and order of the court below convicting and sentencing the appellants is hereby confirmed. The bail bonds of the appellants are cancelled. They are directed to surrender before the court below to serve out the sentence passed against them.

R.N. Prasad, J.

I agree.