

(2005) 10 AHC CK 0026
In the Allahabad High Court
Case No : Criminal Appeal No. 1667 of 2001

Prithvi Nath Mishra and Sarvajeet Yadav	APPELLANT
Vs	
State of U.P.	RESPONDENT

Date of Decision : 19-10-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 212, 313, 464
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2005) 10 AHC CK 0026

Hon'ble Judges : Imtiyaz Murtaza, J; G.P. Srivastava, J

Bench : Division Bench

Advocate : A.K. Awasthi, A.N. Tripathi, G.S. Chaturvedi, Manish Tiwary, R.C. Upadhyay and S.N. Singh, for the Appellant; A.G.A., for the Respondent

Judgement

G.P. Srivastava, J.—These criminal appeals have been preferred against the judgment and sentence dated 30.3.2001 passed by Sri Khalid Iqbal, Additional Sessions Judge, Court No. 8, Deoria in Session Trial No. 359 of 1988 State v. Arjun and Ors. under Sections 147/148/149/302 I.P.C. P. S. Lar district Deoria whereby he held the accused appellants Prithvi Nath Misra, Sawaroo, Jay Shree, Lallan Singh, Awadhesh Singh, Baldeo Singh, Nayan Singh, Beeran, Tej Bahadur, Vikrama Singh, Rama Kant, Hari LaJ, Sarvajeet Yadav and Kamla Singh guilty of offence under Sections 147/148/302 read with 149 I.P.C. and sentenced them to under go one year rigorous imprisonment u/s 147 I.P.C. and two years rigorous imprisonment Under 148 I.P.C. life imprisonment u/s 302/149 I.P.C. All the sentences were made concurrent.

2. The prosecution case in brief is that informant Gauri Shankar Yadav is resident of village Dharahara P.S. Lar district Deoria. One Yugal Kishore brother of the informant was falsely implicated in the murder case of one Ram Kishore Singh of the same village and was acquitted in April 1986. Since then the family members of Ram Kishore were inimical with the family members of the informant. On 29.6.1986 deceased Radha Binesh father of the informant was digging grass

(doob) in the field adjoining to his house. The informant and his brother deceased Bashistha Yadav were easing towards north of the grove of one Jiyut situate at north of their house. At about 6.00 A.M. accused persons Prithvi Nath Misra, Lallan Singh, Kamla Singh all armed with guns, accused persons Arjun Singh, Sawaroo, Jay Shree, Nayan Singh alias Ram Narayan Singh armed with Pharsa proceeded towards the informant. Accused persons Hari Nandan Singh, Sarvajeet Yadav. Awadhesh, Baldeo Singh all armed with guns, Prem Sagar, Beeran, Tejoo alias Tej Bahadur, Vikrama, Rama Kant and Hari Lal all armed with Pharsa, towards eastern side of the house of the informant suddenly proceeded with towards the deceased Radha Binesh who rushed towards the Chakroad but all the accused persons surrounded and fired upon him, consequently he felled down. Thereafter the neck of the deceased was chopped off by Pharsa. The party of accused Prithvi Nath Misra chased the informant and his brother deceased Vashistha Yadav, opening fire and started exhorting. The informant ran towards the east and the deceased Vashistha towards west. The accused persons with intention to kill Vashistha chased him, fired upon him and caused injuries by Pharsa. The occurrence was witnessed by Bansh Bahadur Yadav, Yugal Kishore, Brij Kishore, Prem Prakash and so many persons of the village. After committing the murder the accused persons threatened the family members of the informant and the village people that one by one will be picked up and the persons who will give evidence will meet the same fate. Thereafter the accused persons went towards the other side of river by a boat.

3. The informant Gauri Shanker Yadav got the written report scribed from one Harish Kumar Yadav and submitted to Police Station Lar on the same day at about 9.30 A.M. A chick F.I.R. Ext. Ka-9 was prepared. The case was registered vide G.D. No. 17 at about 9.35 A.M. dated 21.6.1987. The investigating Officer Inspector Shambhoo Narayan Rai P.W. 4 reached the place of occurrence, prepared the inquest report of the deceased Radha Binesh and Vashistha Yadav, sealed the dead bodies and sent for post mortem examination. He took out blood stained and plain earth from the place of occurrence and sealed in two separate containers. He took out blood stained Gamchha and Pharsa (Fawra), sealed the same and prepared memos. He picked up two empty cartridges near the dead body of deceased Radha Binesh and two empty cartridges near the dead body of deceased Vashistha Yadav. He took blood stained and plain earth where the dead body of Bashistha Yadav was lying. After usual investigation he submitted charge sheet against the accused persons.

4. The autopsy of the dead body of deceased persons Radha Binesh and Vashistha Yadav were conducted by Dr. R.S. Yadav E.N.T Surgeon district hospital, Deoria on 22.6.1987. According to his opinion the death of the deceased persons had taken place 1 1/2 days before the post mortem examination and was caused due to shock and haemorrhage as a result of ante mortem injuries.

5. The ante mortem injuries of Radha Binesh are as below:

1) Incised wound in whole circumference of face & neck at the level of upper part of neck in line of Rt. side of face below the Rt. ear and behind the occipital region. Head and face separated from the neck. Both belong to the same person (Body & face). All the soft tissue, B.V. cervical spine divided.

2) Firearm wound of 0.5 cm in diameter, medial aspect of Rt. thigh just below the inguinal ligament.

3) Firearm wound of entry 0.5 cm in diameter medial aspect of Rt. thigh 17 cm above the Rt. knee joint.

4) Firearm wound of entry 0.5 cm in diameter medial aspect of Rt. thigh 12 cm above the Rt. knee joint.

5) Firearm wound of exit 0.7 cm in diameter lateral aspect of Rt. thigh 6 cm below the iliac crest.

6) Fire arm wound of exit 0.7 cm in diameter lateral aspect of Rt. thigh 15 cm above the Rt. knee joint.

7) Firearm wound of exit 0.7 cm in diameter lateral aspect of Rt. thigh 13 cm above the Rt. knee joint.

8) Wound of entry (Fire arm) front of Lt. thigh 14 cm above the Lt, knee joint 0.5 cm in diameter.

9) Wound of exit (Fire arm) medial aspect of (Lt.) thigh 10 cm above the (Lt) knee joint 0.7 cm in diameter.

6. The ante mortem injuries of Bashistha Yadav are as below:

1) Incised wound 22 cm x 10 cm x bone deep on (Lt) side of neck extending from (Lt) angle of mouth to back of neck. All the soft tissue, blood vessels muscles & cervical spine divided.

2) Incised wound 5 cm x 2 cm x muscle deep on ant. Aspect of Rt. arm, 6 cm above from wrist joint.

3) Abrasion 4 cm x 1 cm front of lower abdomen 6 cm below the umbilicus.

4) Fire arm wound of exit 0.7 cm in diameter, medial aspect of left thigh upper part.

5) Fire arm wound of exit 0.7 cm in diameter medial aspect of left thigh upper part.

6) Incised wound 15 cm x 8 cm x bone deep on front of Rt. leg lower part 7 cm above the (Rt.) ankle joint Rt. tibia fractured.

7. The accused persons have been charged for offence under Sections 148, 302/149 I.P.C. They pleaded not guilty and claim trial.

8. The prosecution examined P.W. 1 Brij Kishore, P.W. Gauri Shanker Yadav

informant, P.W. 3 Dr. R.S. Yadav, P.W. 4 Inspector Shambhoo Narain, Investigating Officer and P.W. 5 Constable Rudra Bux Ojha.

9. The accused person in their statements u/s 313 Cr P.C. have denied the prosecution case. They have stated that they did not lead any evidence in defence.

10. The accused Prithvi Nath Misra and Sarvajeet Yadav had stated that they did not allow construction of Bandha which annoyed the informant and thus they have been falsely implicated.

11. The accused Arjun and Harinandan died during the pendency of trial, therefore, their case was abated. Accused Prem Sagar absconded and his case was separated.

12. After considering the evidence on record the learned Additional Sessions Judge had convicted and sentenced the appellants as aforesaid. Feeling aggrieved by the judgment and sentence passed by the Court below the accused persons have preferred these appeals.

13. We have heard Sri G.S. Chaturvedi senior Counsel, Sri R.C. Upadhyay. Sri A.N. Tripathi, Sri S.N. Singh for the appellants and Sri A.K. Dwivedi A.G.A. for the State.

14. It is undisputed that the death of deceased Radha Binesh and Vashistha Yadav had taken place on 21.6.1987 by fire arm injuries and the injuries caused by sharp edged weapon i.e. pharsa. The ante mortem injuries noted in the post mortem report of both the deceased fully proved that both the deceased died due to shock and haemorrhage as a result of ante mortem injuries i.e. fire arm injuries and incised wounds caused by sharp edged weapon i.e. Pharsa. Both the post mortem reports stands proved by P.W. 3 Dr.R.S. Yadav who conducted the post mortem of the aforesaid deceased persons.

15. Learned Counsel for the appellants has argued that the learned Addl. Sessions Judge has incorrectly framed charges against the appellants and the description given in the charge is vague. It has been argued that there are two sets of accused persons. The first set consists of ten accused persons had allegedly committed the murder of deceased Radha Binesh and second set of accused persons has allegedly caused murder of deceased Vashitha Yadav but their act has not been described separately instead in one charge they all have been charged. He has further argued that at the time of framing of charge particulars as to time, place and person should be described as provided u/s 212 Cr.P.C. which reads as below:

Particulars as to time, place and person.- (1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

16. It is true that the accused persons have been charged jointly in respect of both the murders and separately but it causes no prejudice to the accused persons because they were aware of the prosecution case from the very beginning. Section 464(1) Cr.P.C. provided as below:

Effect of omission to frame, or absence of, or error in, charge.- (1) No finding, sentence or order by a Court or competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

17. The alleged omission in framing of the charges does not occasion failure of justice it causes no prejudice to the accused persons at all.

18. The learned Counsel for the appellants argued that the time of occurrence as given by the prosecution i.e. 6.00 A.M. has not been proved because no other person except the informant and deceased Vashistha went to ease near the place of occurrence. Though in villages usually in morning time people go out side to ease. He has further argued that no alarm was raised either by the deceased persons or by the witnesses at the time of occurrence and no other person except the interested witnesses saw the occurrence. He has further argued that P.W. 3 Dr.R.S. Yadav in his statement did not rule out the possibility that the deceased persons received injuries about 3.00 or 4.00 A.M. on 21.6.1987. The argument advanced by the learned Counsel for the appellants do not appeal to us firstly because there is consistent statements of both the eye witnesses P.W. 1 Brij Kishore and P.W. 2 Gauri Shanker Yadav that the occurrence had taken place at about 6.00 A.M. on 21.6.1987. Dr. R.S. Yadav (PW 3) has stated that it is possible that the death of the deceased had taken place about 6.00 A.M. on 21.6.1987. The injuries were such that the death has taken instantaneously. In case any other person did not go to ease near by at the time of occurrence i.e. 6.00 A.M. it cannot be falsify the prosecution case. We are, therefore, of the view that the prosecution has successfully proved the time of occurrence i.e. 6.00 A.M. on 21.6.1987

19. The learned Counsel for the appellants has further argued that the place of occurrence is not the place which has been shown by the prosecution. In this connection he has referred the statement of P.W. 1 Brij Kishore who, had stated that when the accused persons fired at his father Radha Binesh he fell down there at Chakroad. Similarly he has referred the statement of P.W. 2 Gauri Shanker Yadav informant who too had stated that after receiving fire arm injury his father fell down at Chakroad. The learned Counsel for the appellants has referred the site plan wherein the place where the deceased Radha Binesh was killed has been shown by letter "A" which is towards western side of the field of Brij Bhushan Singh. The Investigating Officer had shown the Chakroad at place "J" which is far away from the place "A". It appears that there is a passage in between field of Brij Bhushan Singh and Dhoop Singh, place "A" has been shown

in between the said passage. It may be possible that the said passage was considered as Chakroad by the witnesses therefore the place has been referred by them as Chakraod. This position has not been clarified by the learned Counsel for the accused persons when the investigating officer was in the witness box nor it was clarified from the witness referred above. In order to fix the place of occurrence the Investigating Officer Shambhoo Narayan Rai P.W. 4 has stated that he picked up blood stained and plain earth, one blood stained Gamchha, one blood stained Fawra from the place where the dead body of the deceased Radha Binesh was lying. He has picked up two empty cartridges near the place, beside the well, where the dead body of Radha Binesh was found Therefore the place of occurrence stand fixed. Nothing has been said regarding the place where the deceased Vashistha Yadav was murdered which has been shown by letter "H" which is in the field of Jay Narain Pandey, except that no Lota or tumbler was found at that place though it has come in the evidence that the informant and deceased Vashistha were easing at that place. It is immaterial that the Investigating Officer had not find these things because there may be a possibility that some one picked out the said Lota. The distance in between the place "A" and "H" has been given as 350 paces. The Investigating Officer found blood and empty cartridges near the place where dead body of deceased Bashistha Yadav was lying.

20. The learned Counsel for the appellants has further argued that according to the prosecution case the occurrence has taken place in two phases at two different places. The topography of the places show that the eye witnesses had no opportunity to witness both the occurrence. In order to appreciate this argument a reference of site plan is necessary. The Investigating Officer in site plan has shown the place where the deceased Radha Binesh was murdered by letter "A". He has shown the place from where the witness Yugal Kishore and Brij Kishore (PW 1) had seen the occurrence by letter "B" which is towards south in the Sahan of the informant. The Investigating Officer had shown the place where deceased Vashistha Yadav was murdered by letter "H". The occurrence was seen by P.W. 2 Gauri Shanker Yadav informant from the place "G" from where both the places "H" and "A" are visible. There is no obstruction in between two places from the place "G". Similarly a person sitting at place "B" can very well see the occurrence at place "A" and place at "H". No material obstruction is there in between place "B" to "A" Though there situate a grove in between place "B" to place "H" and there is no evidence mat the grove prevents or obstructs the view from place "B" to place "H". In this connection P.W. 1 Brij Kishore has stated that there is a grove in between the place where Gauri Shanker Yadav and deceased Vashistha had gone to ease and the place from where his father deceased Radha Binesh was removing the grass (doob). The said grove is in an area of about 1 1/2 bigha. This is an old grove. It has not been suggested that the witness cannot see the occurrence specially relating to the murder of Vashistha Yadav due to. the said grove. P.W. 2 Gauri Shanker Yadav was at place "G" from where both the place "A" and "H" are visible and there can be no doubt about P.W. 2

Gauri Shanker Yadav informant" that he was in a position to "witness the entire occurrence.

21. The learned Counsel for the appellants has. further argued that the motive of occurrence has been shown in the F.I.R. that Yugal Kishore the brother of informant was impleaded as an accused in the murder of one Ram Kishore Singh of his village. The case ended into acquittal of Yugal Kishore, which annoyed the family members of Ram Kishore Singh. It is in the evidence that the aforesaid Yugal Kishore Singh was present at the time of occurrence at place "B" but no attempt was made to hurt him by the accused persons which shows that either Yugal Kishore Singh was not there or the witnesses are not telling the truth. There are consistent statements of both the witnesses of fact P.W. 1 Brij Kishore and P.W. 2 Gauri Shanker Yadav informant that Yugal Kishore was present It may be possible that the accused persons escaped the notice of the presence of Yugal Kishore and i.e. he remained unhurt.

22. The prosecution has produced two eyewitnesses. P.W. 1 Brij Kishore and P.W. 2 Gauri Shanker Yadav. Both sons of deceased Radha Binesh and the real brothers of the deceased Bashistha Yadav. P.W. 1 Brij Kishore has narrated the entire occurrence. He has described the specific roles of all the accused persons in both the murders. It has also been held that both the witnesses of fact had opportunity to see the occurrence. The witnesses were subjected to lengthy cross-examination but nothing to come out to discredit them. As regards P.W. 2 Gauri Shanker Yadav informant is concerned it has been argued that he did not narrate the specific roles of the accused persons by name. He has stated that all the ten accused persons armed with gun and pharsa chased Radha Binesh and out of them two persons surrounded him and fired upon him. Thereafter they chopped off the head of the deceased Radha Binesh. Regarding the other occurrence he had stated that all the seven accused persons attacked the deceased Vashistha Yadav, fired upon him, consequently he fell down. During cross-examination he has not given any specific part to any of the accused by name but has stated that two persons surrounded his father, two persons fired upon him. He has further stated that one person gave Pharsa blow to his father. All the accused persons fired upon Vashistha Yadav but only one firearm injury was caused to him. Three persons have caused pharsa blow to Vashistha Yadav. Thus it is clear from his statement that he did not assign the specific role to the accused persons by name. But at the same time it is pertinent to note that the defence during cross-examination to this witness did not dare to ask the name of the accused who has fired upon both the deceased persons or caused Pharsa injuries to both the deceased persons He has not been confronted by his statement under 61 Cr.P.C. given to the Investigating Officer wherein he has specifically assigned the role. It is worth mention that the statement of P.W. 2 Gauri Shanker Yadav. informant was recorded after 12 1/2 years after the occurrence and it is possible that his memory faded due to the lapse of such a considerable period. Had he been specifically asked in the cross-examination he might have given specific name. Therefore if he has not assigned specific roles

by name it does not mean that he is not telling truth. Thus we are of the opinion that both the aforesaid prosecution witnesses P.W. 1 Brij Kishore and P.W. 2 Gauri Shanker Yadav informant are worth reliance.

23. Now it is necessary to examine that whether all the accused persons were present and participated in the occurrence in "the manner alleged by the prosecution. The prosecution case shows that in the murder of Radha Binesh there were accused Hari Nandan, Sarvajeet Yadav, Awadhesh, Baldeo all armed with guns and Prem Sagar, Beeran, Tejoo alias Tej Bahadur, Vikrama Rama Kant Singh and Hari Lal armed with pharsa. It has come in the evidence that deceased accused Hari Nandan and accused appellant Awadhesh fired upon the deceased Radha Binesh. The accused appellants Sarvajeet Yadav, Baldeo and absconding accused Prem Sagar exhorted. The accused appellants Beeran Mallah, Vikrama Singh and Hari Lal caught hold the deceased Radha Binesh and accused appellant Tejoo alias Tej Bahadur chopped off his head causing injury by pharsa in his neck P.W. 1 Brij Kishore has stated that when the aforesaid ten accused persons chased the deceased Radha Binesh he ran towards north. Two accused persons surrounded him by north who had fired upon him towards north. His statement shows that two persons who surrounded the deceased Radha Binesh had fired upon him. He has stated that deceased accused Hari Nandan and accused appellant Awadhesh fired upon the deceased Radha Binesh P.W. 2 Gauri Shanker Yadav informant has stated that it is incorrect to say that the accused persons exhorted and chased to his father. He has further stated that only two persons have surrounded his father and other persons did not surround him. He has further stated that the accused persons did not surround him from all the sides. He denied that all the accused persons surrounded his father and fired. So from the statements of these witnesses of fact which includes informant P.W. 2 Gauri Shanker Yadav shows that only two accused persons surrounded and fired upon the deceased Radha Binesh. The remaining accused persons had neither surrounded him nor fired upon him. So it is established that deceased accused Hari Nandan and accused appellant Awadhesh surrounded and fired upon the deceased Radha Binesh.

24. There is consistent statements of both the P.W. 1 Brij Kishore and P.W. 2 Gauri Shanker Yadav informant that accused appellant Tej Bahadur chopped off the neck of deceased Radha, Binesh by giving Pharsa blow.

25. P.W. 1 Brij Kishore has stated that when deceased Radha Binesh received gunshot wound, the accused appellants Beeran Mallah, Vikrama Singh and Hari Lal caught hold him, there upon accused Tejoo alias Tej Bahadur chopped off the neck of the deceased by giving a pharsa blow. P.W. 3 Dr.R.S. Yadav has stated that if the deceased is caught hold by some persons it would be difficult for the person causing injury No. 1 because it may be possible that the person holding the deceased may get injured, therefore this injury cannot be caused by force. The situation is that deceased Radha Binesh had already received as many as eight fire arm injuries. Six on the right thigh and two on left thigh. All the injuries

were caused on the front side of the body and naturally the deceased fell down having his face towards earth. Injury No. 1 which is incised wound in whole circumference of the neck at the level of upper part of neck was caused by exercising great force which resulted into head and face separated from the body. In such circumstances the story of catching hold by three persons does not appeal to reason because no part of body except hand was available for catching hold and in that event it was not possible to give such a blow which may cause head and neck separated. Therefore we are of the opinion that the story of catching hold does not hold water. It has come in the evidence of the witness that accused appellants Sarvajeet Yadav, Baldeo and absconding accused Prem Sagar exhorted. P.W. 1 Brij Kishore has stated that after committing the murder of his father the accused Prem Sagar, Sarvajeet Yadav and Baldeo exhorted to kill if they proceed ahead. This part of statement falsifies-motive because the F.I.R. shows that the accused persons had motive towards Yugal Kishore who was there along with Brij Kishore P.W. 1. Had the accused persons saw them and exhorted there was no reason why they did not chase them P.W. 2 Gauri Shanker Yadav informant has stated that it is wrong to say that the accused persons exhorted his father. We are, therefore, of the view that the story of exhortation by the accused appellants Sarvajeet Yadav, Baldeo and absconded accused Prem Sagar do not hold good.

26. As regards the murder of deceased Vashistha Yadav the prosecution case is that accused appellants Prithvi Nath Misra, Lallan Singh and Kamla Singh were armed with guns. The deceased accused Arjun and accused appellants Sawaroo, Jay Shree, Nayan Singh alias Ram Narayan Singh were armed with pharsa reached there where the deceased Vashistha Yadav and informant Gauri Shanker Yadav P.W. 2 had gone to ease. They chased the deceased. The accused appellants Kamla Singh and Lallan Singh fired upon the deceased Vashishta causing fire arm injuries to him and accused appellants Jay Shree, Sawaroo and deceased accused Arjun gave pharsa blow by which he fell down and died. P.W. 2 Gauri Shanker Yadav informant stated that he was present with deceased Vashistha Yadav at the time of occurrence. The party consisting of aforesaid seven persons chased them and they began to rush. He had stated that none of the accused persons attacked on him. He has further stated that the accused persons did not chase him but to his father Vashistha Yadav. Therefore the story of chasing by all the accused persons to deceased Vashistha Yadav and informant goes. Had the accused persons chased Vashistha Yadav there is no reason why they did not chase the informant Though both are the real brothers and they had no specific enmity with deceased Vashistha Yadav. It appears that the story of chasing by the accused persons to Vashistha Yadav is an improvement and it could not be established.

27. From the evidence of eyewitnesses it has been established that accused appellants Kamla Singh and Lallan Singh fired upon the deceased Vashistha Yadav and deceased Arjun and accused appellants Sawaroo and Jay Shree gave Pharsa blow which proved fatal.

28. All the accused persons have been charged for the offence under Sections 148/302 read with 149 I.P.C. for having formed unlawful assembly and committing the death of Radha Binesh and Vashistha Yadav by causing injuries in furtherance of common object to cause the death of Radha Binesh and Vashistha Yadav. The prosecution case presupposes a common object of accused persons in committing the murder of the deceased persons. The F.I.R. cites a single instance of enmity that the son of deceased Radha Binesh, Yugal Kishore was involved in the murder case of one Ram Kishore Singh who was later on acquitted. No enmity of any kind has been alleged against the accused persons who are not connected with aforesaid Ram Kishore. P.W. 2 Gauri Shankar Yadav, informant has stated that he had no enmity with the accused persons excepting accused Awadhesh, Vikrama Singh, Lallan Singh and Baldeo Singh. He further stated that even the family members of Baldeo Singh and Awadhesh had neither abused nor beaten to any member of the family of the informant. He has further stated that all the accused persons never have been accused in any case together nor they stood as witness together in any case nor they were engaged in any profession together. The accused persons belonged to different villages and different casts. He has further stated that Vashistha Yadav had no enmity with any of the accused persons, P.W. 1 Brij Kishore has stated that all the accused persons belonged to different villages and different families. He does not know the family members of all the accused persons. All the accused persons together were neither the co-accused in any case nor stood as witness in any case. He has further stated that he saw all the accused persons together in the house of Ram Kishore 7 to 8 years before in connection with some marriage but he could not give the description of the said marriage or any other details of the marriage. If it is taken as true that in a marriage 7 to 8 years back all the accused persons who belonged to near by villages assembled in the house of Ram Kishore it does not mean that they developed the common object to commit the murder of deceased persons. Had the accused persons met next together with common object as alleged in the F.I.R. they must have attempted on Yugal Kishore who was very well there.

29. In view of above discussions there could be no general inference of any common object on the part of the accused persons, Their involvement in the offence will be judged an act performed by them as there is no evidence of any common object. The common object if any will be judged only on the basis of the criminal act performed by them in the occurrence.

30. The above discussion shows that the specific role of murder of Radha Binesh is proved against accused appellants Awadhesh, Tejoo alias Tej Bahadur and deceased accused Hari Nandan. The presence of accused appellants Awadhesh and Tejoo alias Tej Bahadur fully stand proved whereas the presence of remaining accused appellants Sarvajeet Yadav, Baldeo Singh, Beeran Mallah, Vikrama Singh, Hari Lal and Rama Kant Singh could not be proved because the allegation against them having caught hold, surrounded the deceased and exhorting the witness could not be proved. Therefore there is no material to

substantiate the charge against these accused persons. Besides that the charge u/s 147/148 I.P.C. could not be proved against the accused appellants Awadhesh and Tejoo alias Tej Bahadur because there is no evidence of unlawful assembly. The charge against the accused persons Awadhesh and Tejoo alias Tej Bahadur Singh u/s 302 read with 34 I.P.C. for having committed murder of deceased Radha Binesh stand proved.

31. As regards the murder of deceased Vashistha Yadav it has come in the discussion that the accused appellants Kamla Singh, Lallan Singh, caused fire arm injuries. Accused appellants Jay Shree and Sawaroo gave Pharsa blow to the deceased along with deceased accused Arjun. So the charge of offence u/s 148/302 read with 149 I.P.C. stand proved against the accused appellants Kamla Singh, Lallan Singh, Jay Shree and Sawaroo. The charge u/s 147/148/302 read with 149 I.P.C. could not proved against the accused appellants Prithvi Nath Misra, Nayam Singh alias Ram Narayan Singh.

32. The learned Counsel for the appellants has argued that P.W. 1 ,Brij Kishore has admitted that his brother Yugal Kishore and Gauri Shanker Yadav are, accused in a murder case. They were prosecuted in the year 1984. In the year 1987 Gauri Shanker Yadav was prosecuted in a murder case which is still pending. In 1988 a case u/s 307/504/506 I.P.C. was registered against P.W. 2 Gauri Shanker Yadav, the informant who has admitted the aforesaid criminal cases pending against him. Besides that he has admitted that a case under Gangster Act is also pending against him and his brother Yugal Kishore. Learned Counsel for the appellants has argued that the above admission go to show that number of criminal cases are pending against the informant Gauri Shanker Yadav and his brother Yugal Kishore. It is possible that any of the aggrieved person have committed the murder of deceased Radha Binesh and Vashistha Yadav. In this connection he has placed reliance on Badam Singh Vs. State of Madhya Pradesh, We have gone through the ruling and found that it is distinguishable on fact. In the said case the deceased was a history sheeter and involved in a large number of criminal offences including attempt of murder, kidnapping, gangster etc. Then the Apex Court has held that the possibility of having been killed by one of his enemies cannot be ruled out. In the instant case there is no evidence that any criminal case was pending against the deceased Radha Binesh and Vashistha Yadav. The statements of the prosecution witnesses shows that the criminal cases are pending against the informant and his brother. So there could be no possibility that the deceased persons had been killed by the enemies of informant and his brother specially when the informant and his brother were all along present during the occurrence and remained unhurt.

33. In the result Criminal Appeal No. 1667 of 2001 Prithvi Nath Misra and Sarvajeet Yadav v. State of U.P. is hereby allowed and the appellants are acquitted from the offence u/s 147/148/302 read with 149 I.P.C. They are on bail. They need not surrender. Their bail bonds are cancelled and sureties are discharged.

34. Criminal Appeal No. 1273 of 2001 Vikram Srng and Sawaroo v. State of U.P. in respect of accused appellant Vikrama Singh is hereby allowed. He is acquitted from the offence under Sections 147/148/302 read with 149 I.P.C. He is on bail. He need not surrender. His bail bonds are cancelled and sureties are discharged. The appeal in respect of accused appellant Sawaroo is hereby dismissed with the modification that the conviction and sentence u/s 147 I.P.C. is quashed and conviction and sentence u/s 148/302 read with 149 I.P.C. is maintained. He is on bail. His bail bonds are cancelled and sureties are discharged, He is directed to surrender forthwith before the C.J.M. Deoria to serve out the sentences awarded to him.

35. Criminal Appeal No. 1018 of 2001 in respect of Baldeo Singh is hereby allowed. He is acquitted from the offence under Sections 147/148/302 read with 149 I.P.C. He is on bail. He need not surrender. His bail bonds are cancelled and sureties are discharged. The appeal in respect of accused appellants Kamla Singh, and Lallan Singh is hereby dismissed with the modification that the conviction and sentence of accused Kamla Singh and Lallan Singh in respect of offence u/s 147 I.P.C. is quashed and conviction and sentence u/s 148/302 read with 149 I.P.C is maintained. The appeal in respect of appellant Awadhesh Singh is also hereby dismissed with the modification that his conviction and sentence u/s 147/148/302 read with 149 I.P.C. is converted into the sentence u/s 302/34 I.P.C. He is convicted for the offence u/s 302/34 I.P.C. for life imprisonment. The accused appellants Awadhesh Singh, Kamla Singh and Lallan Singh are on bail. Their bail bonds are cancelled and sureties are discharged. They are directed to surrender before the Chief Judicial Magistrate Deoria forthwith to serve out the sentence awarded to mem.

36. Criminal Appeal No. 2599 of 2004 in respect of accused appellants Hari Lal, Beeran Mallah, Rama Kant Singh and Nayan Singh alias Ram Narayan Singh is hereby allowed. They are acquitted from the offence under Sections 147/148/302 read with 149 I.P.C. They are on bail. They need not surrender. Their bail bonds are cancelled and sureties are discharged. The appeal in respect of appellant Jay Shree is hereby dismissed with the modification that his conviction and sentence in respect of offence under 47 I.P.C. is hereby quashed and conviction and sentence under Sections 148/302 read with 149 I.P.C. is maintained. The appeal in respect of appellant Tejoo"! alias Tej Bahadur Singh is also hereby dismissed with the modification that his conviction and sentences under Sections 147/148/302 read with 149 I.P.C. is converted into the conviction and sentence u/s 302/34 I.P.C. for life imprisonment. The accused appellants Jay Shree and Tejoo alias Tej Bahadur Singh are on bail Their bail bonds are cancelled and sureties are discharged. They are directed to surrender forthwith before the Chief Judicial Magistrate. Deoria to serve out their sentences.

37. The Chief Judicial Magistrate, Deona is directed to take the above appellants into custody forth with and send them to jail to serve out their sentences and send his compliance report to this Court within a month.

38. Office is directed to send a copy of this judgment to the Chief Judicial Magistrate, Deoria forthwith for necessary compliance.