
(2003) 12 JH CK 0067

In the Jharkhand High Court

Case No : Criminal Appeal No. 156 of 1997

Ramdayal Yadav and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 04-12-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 149, 302, 380, 448

Citation : (2004) 1 JCR 302

Hon'ble Judges : S.J. Mukhopadhaya, J;Lakshman Uraon, J

Bench : Division Bench

Advocate : Ajay Kumar Singh and Sunil Kumar Singh, Nos. 1-5, 7, 9, 10-13, 15, 17, 18 and 19, J.P. Pandey, No. 16 and A. N. Deo, P.P. Chatterjee and Shailendra Jit, Nos. 6, 8 and 14, for the Appellant; Jawahar Prasad, APP and M.K. Mishra, for the Respondent

Final Decision : Allowed

Judgement

Lakshman Uraon, J.—The above appellants have named preferred this appeal against the judgment and order of conviction and sentence dated 3.7.97 and 8.7.97 respectively passed by the learned 1st Additional Sessions Judge, Chatra in S.T.No. 38/88, whereby and whereunder, all the appellants have been convicted u/s 302/149 448 and 380 IPC and sentencing each of them to undergo imprisonment for life u/s 302/149 IPC. However, no separate sentence was passed for the offence punishable under sections 448 and 380 IPC.

2. The prosecution case has arisen on the fardbeyan (Ext. 2) of Lilo Mahto, PW--9, son of the deceased, Sahdeo Mahto, recorded by K.K. Mishra, PW-10, of Etkhori P.S at village Petadauri on 28.6.87 at 12 noon regarding an occurrence which took place on 27.6.87 at 8 p.m. till 6.30 a.m. of 28.6.87. The FIR was registered at 17.45 Hrs. on 28.6.87 and a formal FIR (Ext.3) was drawn against 20 persons. After investigation charge sheet was submitted against them under Sections 147 148 149 302 448 and 379, IPC. Charges were framed against all the twenty accused persons under Sections 149/302448 and 380, IPC. In course

of trial Dilo Yadav died, hence prosecution against him was dropped.

3. The informant, Lilo Mahto, in his fardbeyan, Ext. 2, on which he signed, Ext. 1/2, has alleged that on 27.6.87 at 8 p.m. there was an alarm in the village that the appellant, Gppi Mahto, was assaulted in Pethrapur by another villagers. Soon there after, in the village a rumour was spread that Bariwari Mahto and others with the help of other criminals assaulted Gopi Mahto. To take revenge, all the appellants armed with deadly weapons went to the door of Punit Mahto and abused him. Punit Mahto did not open the door rather he bolted it from inside. The assailants pelted stones on his house. The informant claimed to have identified all the twenty persons including these appellants who were armed with deadly weapons. The informant alongwith family members entered into his house out of fear and closed the door from inside. Those named accused-appellants are Ramdayal Yadav, Chandradeo Yadav, Mathura Yadav, Mahabir Yadav, Miser Yadav, Kisun Yadav, Manik Yadav, Nanhku Yadav, Liladhari Yadav, Litan Mahto, Jitan Mahto, Bisheshwar Mahto, Dhenu Mahto, Rajkumar Yadav, Bhim Yadav, Shambhu Yadav, Dilo Yadav (since dead), Gopi Mahto, Yugal Mahto and Jageshwar Mahto. They had formed an unlawful assembly and surrounded the house of the informant from all sides. In the morning of 28.6.87 at 6.30 a.m. the appellants who are named in the FIR started pelting stones on the house of the informant and uprooted the doors. The informant managed to escape and from a short distance he saw all the appellants pelting stones, uprooting door planks and breaking the wall of the house. After breaking the doors some of them entered into the room of his father, Sahdeo Mahto (since murdered) and started assaulting him. His father raised alarm to save his life but after five minutes his voice was silenced. The assailants uttered that he (Sahdeo Mahto) died. PW-1, Brahmdeo Mahto, who is disabled, informed the informant that his father, Sahdeo Mahto, was murdered inside the room. Thereafter, they dragged him out and laid him on a cot. Thereafter, raising slogans of "Kali Ma Ki Jai" they gave round of the village and thereafter, towards South and North of the house of Budhan Yadav on the road leading towards the river, Barakar, the dead body was laid down. After causing murder of Sahdeo Mahto, they broke the wooden boxes and took away silver Hasuli weighing 2 K.G, silver chain four in numbers weighting 1 K.G valued at Rs. 9.000A cash Rs. 3500/- and documents concerned with landed properties and fled away. They alleged occurrence took place only due to land dispute pending in between them. The assailants had threatened to cause murder and set the house in flames.

4. The prosecution to substantiate the charge levelled against these appellants, has examined three sons, three, daughter-in-laws and brother of the deceased, who claimed themselves to be the eye-witnesses. They are PW-1, Brahmdeo Mahto (son of the deceased), PW-2, Gunjri. Devi, PW-3, Sudama Devi and PW-4, Bin-dua Devi, all daughter-in-laws of . the deceased. PW-5, Chaturi Mahto is the brother of the deceased. PW-6, Lakhan Mahto and PW-9, Lib Mahto, (informant) both are the sons of the deceased. PW-7, Shankar Prasad and PW-8, Nunu Mahto are the witnesses of the Inquest-report. PW-10, Kalikant Mishra, is the IO. PW-11

is Dr. N.K. Addi, who conducted autopsy on the dead body of the deceased, Sahdeo Mahto and PW-12, Shambhu Prasad, is a formal witness who proved S.D. Entry No. 355 dated 28.6.87 entered at Itkhor P.S. in the pen and signature of the then Officer-in-charge, K.K. Mishra, Ext.6. The learned 1st. Additional Sessions Judge, Chatra relied upon the evidence of PWs-1, 2, 3, 4, 5, 6, and 9 as eye-witnesses, supported by the medical evidence of PW-11, Dr. K.K. Addi, and objective findings of the IO, PW-10, Kali Kant Mishra who prepared inquest-report of the dead body of Sahdeo Mahto on which PW-7, Shankar Prasad and PW-8, Nunu Mahto signed. Relying on their evidence the learned 1st Additional Sessions Judge, Chatra convicted all the appellants u/s 302/149448 and 380 IPC and sentencing each of them to undergo imprisonment for life for the offence punishable u/s 302/149 IPC. However, no separate sentence against them under Sections 448 and 380 IPC was passed.

5. Assailing the judgment and order of conviction and sentence passed by the learned 1st Additional Sessions Judge. Chatra, the learned counsel for the appellants have submitted that only the interested witnesses have been examined by the prosecution. Admittedly there is land dispute in between the parties. The alleged occurrence took place at 8 p.m. on 27.6.87 and continued till 6.30 a.m. on 28.6.87. Even then, not a single village independent witness has come forward to corroborate the evidence of the interested and closely related witnesses and he has relied upon cases reported in Bir Singh and Others Vs. State of Uttar Pradesh, and State of Andhra Pradesh Vs. Punati Ramulu and others, . It was submitted that none of the interested witnesses who claimed themselves to be the eye-witnesses has actually seen the alleged occurrence. Their statements are parrot like statements which can not be relied, upon. The appellants have been convicted with the aid of Section 149 IPC. The prosecution has failed to substantiate the charge regarding common object of all the appellants to cause murder of Sahdeo Mahto. In the fardbeyan it has been alleged that all the appellants firstly went to the door of Punit Mahto knowing full way that Sahdeo Mahto was not living in that house, They pelted stones on the house of Punit Mahto. When they could not enter into his house, they went to the house of Sahdeo Mahto. In course of evidence all the interested eye-witnesses have deposed that the appellant, Ramdayal Yadav, Ramkumar Yadav had bhala in their hands whereas, Gopi Mahto had lathi in his hands. Gopi Mahto assaulted with lathi on the leg of Sahdeo Mahto who fell down. Then it is alleged that the appellants, Shyamdeo Yadav and Ramkumar Yadav pierced him with bhala resulting his death. There is omnibus allegation against other appellants that they also assaulted with lathi to the deceased as they all were armed with lathi. Only five appellants had entered into the room of Sahdeo Mahto who might have assaulted him. The others entered into the other rooms of the informant and started looting household articles including boxes, ornaments, documents concerning landed properties. Thus, Section 149 IPC is not attracted as common object could not be brought home against the appellants. The learned counsel for the appellants on this point has relied upon cases reported in Prabhakar Shankar

Sawant and Others Vs. State of Maharashtra, Bhudeo Mandal and Others Vs. State of Bihar, Lalji and Ors. v. State of U.P AIR 1989 CLJ 850 and Muthu Naicker and Others Vs. State of Tamil Nadu, .

6. The learned counsel for the appellants has vehemently argued that the original fardbeyan of PW-1, Brahmdeo Mahto recorded by the IO, was suppressed and the present Jardbeyan of PW-9, Lilo Mahto, has been substituted. Hence, the prosecution case is full of doubt which is concocted and embellished and has relied upon cases reported in Ramprasad Vs. State of Maharashtra, and Wilayat Khan and Others Vs. The State of U.P., . It was further submitted that even the interested witnesses of the same family, closely related to each other, who claimed to be the eye-witnesses, have given contradictory statements in the Court which were not stated before the IO in course of investigation. On this point it was relied upon cases reported in Jamuna Singh v. State of Bihar 2000 (3) ECC 1805 Madan Singh v. State of Bihar 2000 (3) ECC 1985 and Punit Mandal v. State of Bihar 2000 (3) ECC 1915 regarding contradictory statements as the informant, PW-9, gave his fardbeyan only on the basis of hearsay information given to him by his brother, PW-1, Brahmdeo Mahto.

7. The learned counsel for the appellants has further submitted that the genesis of the alleged occurrence has not been proved. Punit Mahto whose house was stoned at 8 p.m. on 27.6.87 and Banwari Mahto who came with the IO have not been examined. In the village people of other castes were also living who had no enmity with the informant and his family members. Even then, none of them has come forward to corroborate the prosecution case. The manner of the alleged occurrence is also contradictory and the place of murder of Sahdeo Mahto whether it was inside the room or outside of the room or in the Verandah, has also been contradicted. On these grounds it was submitted that all the appellants deserve acquittal giving them benefit of doubt.

8. The learned APP has submitted that all the appellants had formed an unlawful assembly to cause the murder of Sahdeo Mahto with whom there was land dispute and case was pending in between them. On 27.6.87 it was just a cause that the appellant, Gopi Mahto, is alleged to have been assaulted with the help of some criminals by Banwari Mahto. Banwari Mahto, who is the son of PW-5, Chaturi Mahto, Punit Mahto and the deceased were on one side in the case regarding landed properties. In a preplanned way they pelted stones on the house of Punit Mahto. When his doors could not be opened, they surrounded the house of Sahdeo Mahto (since deceased). Throughout the night they remained there and in the morning of 28.6.87 they again started pelting stones on the house of the Informant. They broke the doors and also demolished the wall of the house. They entered into the hosue. The door planks of the room in which Sahdeo Mahto was sleeping was also broken. He was assaulted with lathi by Gopi Mahto and thereafter, when Sahdeo Mahto fell down then he was given bhala blows by the appellant, Ramdayal Yadav and Rajkumar Yadav. When Sahdeo Yadav died then his dead body was dragged in the verandah and it was taken

round the village road raising slogans of "Kali Ma Ki Jai". The other appellants entered into the other rooms. and looted household articles i.e., wooden boxes, silver ornaments, cash and documents concerning with landed properties and fled away. Their assembly and action throughout the night is ample proof that they were members of an unlawful assembly with the common object to loot the household properties and cause murder of Sahdeo Mahto. The learned Court below has rightly relied upon the evidence of PWs-1, 2, 3, 4, 5, 6, and 9 who are eye- witnesses of the same family and whose evidence was corroborated by PW-10, K.K. Mishra, IO, of this case, supported by the evidence of doctor, PW-11 who conducted autopsy on the dead body of Sahdeo Mahto. At night the appellants had surrounded the house of the informant and they continued till next morning of 28.6.87. The other village independent witnesses out of fear did not go to the PO nor they informed the police. The learned Court below has considered the manner of the alleged occurrence and participation of these appellants were identified by all the eye-witnesses who are closely related and their evidence is reliable which can not be discarded only on the ground of interestedness. The learned 1st Additional Sessions Judge, Chatra has rightly appreciated the evidence of these witnesses and has convicted the appellants and sentenced thereunder.

9. The learned counsel for the appellants has challenged the fardbeyan, Ext. 2, to be the fardbeyan which was recorded to form the FIR in this case. So 1 firstly take up as to whether the Jardbeyan of Lilu Mahto, Ext. 2, is the FIR and as to whether Lilo Mahto, PW-9, the informant, is the eye-witness of the alleged manner of occurrence. The informant in his fardbeyan has claimed that all these appellants firstly pelted stones on the house of his uncle, Punit Mahto, thereafter, they started abusing Punit Mahto and shifted to his house and pelted stones throughout the night after surrounding the entire family who were confined in the house. In the morning on 28.6.87 at 6.30 a.m. they started uprooting the door planks. The informant claimed that he managed to escape and at a short distance he turned back and saw the entire occurrence. He claims that he heard the sound of his father, Sahdeo Mahto, to save his life. After some time his voice was silenced. In the Jardbeyan the informant has mentioned that his brother, Brahmdeo Mahto, PW-1, informed him that their father was murdered inside the room and thereafter he was dragged in the verandah. Soon thereafter, they took the dead body on a cot around the village roads and lastly they left the dead body on the road leading towards Barakar river. PW-1, Brahmdeo Mahto, a disabled person, who can not move, was in the verandah. He heard pelting of stones in the house of Punit Mahto and abusing him at 8 p.m. on 27.6.87. Thereafter, the appellants went to his house abusing and pelting stones and surrounded his house from outside. In the morning at 6.30 a.m. they broke the door. They dragged out his father from the room and took his dead body around the village roads. On that very day at 12 noon the informant came with the police. In the morning he informed about the alleged occurrence to his brother, Lilo Mahto, who went to PS and came with the police. When the police came at

12 noon, he recorded the statement of PW-1 in his courtyard on which he signed. In the night of 27th and 28th of June 1987 both his brothers, Lilo Mahto, PW-9 and Lakhan Mahto, PW-6, were not at home. They had gone out of the home and remained out throughout the night. On the other hand, the females remained inside the house closed in their rooms. When the appellants left the PO house, thereafter, his brother, Lakhan Mahto, PW-6, came at home at about 12 noon. The informant, PW-9, Lilo Mahto, went to his home in the morning at 7 a.m. who was narrated the entire story which took place in their house. Thereafter, Lilo Mahto went to PS. PW-2, Gunjri Devi, wife of PW-6, Lakhan Mahto, in para 6 has deposed that her husband and Bhaisur (Lilo Mahto) had gone out of the home throughout the night. She informed about the entire occurrence to her husband and Bhoisw (PW-9, Lilo Mahto). The police went to their home on 28.0.87 at about 10-11 a.m. alongwith PW-9, Lilo Mahto. The police firstly recorded the statement of PW-1, Brahmdeo Mahto and thereafter the other females stated about the alleged occurrence. PW-4, Bindua Devi, wife of the informant, PW-9, has also corroborated the statement of PW-2 that on 28.6.87 Darogaji went to her house in between 11-12 noon. Her husband, Lilo Mahto, was not at home. Lakhan Mahto was also not at home. Banwari Mahto came with the police. In the village there was a talk that dacoity was committed in the house of Sahdeo Mahto and in course of dacoity, Sahdeo Mahto was murdered. When the IO went to the PO house, first of all PW-1, Brahmdeo Mahto narrated the story of the alleged occurrence. Thereafter, PW-9, Lilo Mahto and PW-6, Lakhan Mahto were asked. Thereafter, all the three females who are daughter-in-laws of the deceased, were asked by the IO PW-5, Chaturi Mahto (brother of the deceased) whose house is adjacent, to the house of Sahdeo Mahto towards West, went to the house of Sahdeo Mahto at about 7.15 a.m. on 28.6.87. He did not see Lilo Mahto, PW-9, and his brother, Lakhan Mahto, PW-6, at home. He was informed that both of them had gone to the paddy field in the evening of Saturday and throughout the night they remained out of the home. At about noon both of them came with the police. The police first of all asked Brahmdeo Mahto, PW-1, whose statement was recorded on which he signed. Thereafter, the females were interrogated. Thereafter, Lilo Mahto and Lakhan Mahto were asked by the IO PW-6, Lakhan Mahto, in Para 8 has deposed that when the police went to the PO house first of all he recorded the statement of PW-1, Brahmdeo Mahto on which he signed. Thereafter, the females gave their statements and then the informant, Dilo Mahto, gave his statement. PW-9. Lilo Mahto, the informant, in Para 27 has deposed that prior to arrival of police at his home he had a talk with PW-1. Brahmdeo Mahto in the morning of 28.6.87 at 7.30 a.m. Thereafter, he went to inform the police. On his way to PS his cousin brother, Banwari Mahto was coming alongwith the police. When he first met the police he did not narrate about the alleged occurrence. When the police went to his home, he also went there later on and saw them in the courtyard. He recorded the statement of Brahmdeo Mahto his brother, PW-1 and the females of his family. Chaturi Mahto, his uncle, PW-5, was also present. In Para 28 he has specifically averred that he did not see the manner of the assault on his father. When the evidence of these

witnesses of one family, closely related, is considered then the statement of PW-10, K.K. Mishra, IO, that on information he went to the village Petadauli and recorded the fardbeyan (Ext. 2) of Lilo Mahto on which he signed, does not get support. On the other hand, all the inmates of the family including PW-1, Brahmdeo Mahto are consistent in evidence that at night PW-6, Lakhan Mahto and PW-9, Lilo Mahto, full brothers of PW-1, Brahmdeo Mahto, were not present at home. In the morning Lakhan Mahto came alongwith the police accompanied by Banwari Mahto. PW-9, Lilo Mahto had gone to his home at 7.30 a.m. He was narrated about the entire occurrence which took place at night and thereafter, he went to inform the police but on his way he met Darogaji, coming alongwith Banwari Mahto. At that place his statement was not recorded rather when Darogaji went to the PO house in between 11-12 noon he firstly recorded the statement of Bahmadeo Mahto on which he signed which was corroborated by PW-1, PW-2, PW-3, PW-4, PW-5, PW-6 and PW-9, the informant himself. When considered all these facts in totality, there is no other conclusion except that the fardbeyan of Brahmdeo Mahto which was recorded prior to recording of the statement of the other witnesses on which Brahmdeo Mahto signed, was suppressed by the prosecution. The informant, PW-9, who is not the eyewitness and is the hearsay witnesses, was narrated by his brother, PW-1. Although he was not present at his home throughout the night, he has given his fardbeyan, Ext. 2, at 12 noon on 28.6.87 which is conclusively . subsequent substituted statement and is not the FIR in the facts and circumstances of the case.

10. Now I take up as to whether the prosecution is able to establish the genesis of the alleged occurrence. Ext. 2 which is the fardbeyan of the informant, PW-9, Lilo Mahto, is in two folds : First Genesis is that on 27.6.87 there was commotion in the village that the appellant, Gopi Mahto, was assaulted in Pathrapur village by another villagers at the instance of Banwari Mahto. The second cause of the alleged occurrence was cases pending in between them regarding landed properties. Punit Mahto whose house was pelted on 27.6.87 at 8 p.m. has not been examined. Brahmdeo Mahto, son of Chaturi Mahto, who with the help of some gundas, caught Gopi Mahto and assaulted him. Then it was Banwari Mahto who was responsible for that assault and who should have been abused and whose house should have been pelted by the appellants. They did not come to the house of Brahmdeo Mahto, rather they went to the house of Gopi Mahto having no connection with the alleged assault by some gundas managed by Banwari Mahto. Even the house of Gopi Mahto was not ransacked, rather the appellants shifted their venue to the house of Sahdeo Mahto. The other inmates including Brahmdeo Mahto who were present at home, were not touched rather it is alleged that only Sahdeo Mahto was murdered. There is land dispute in between the parties as stated in the fardbeyan. PW-1, Brahmdeo Mahto, in Para 6 has deposed that due to assault on Gopi Mahto the alleged occurrence had not occurred. In Para 7 PW-4, Bindiya Devi, wife of the informant, has deposed that there was commotion in the village that dacoity was committed in the house of Sahdeo Mahto in which Sahdeo Mahto was murdered. PW-5, Chaturi Mahto,

brother of the deceased, has deposed that there was enmity in between the parties regarding the land disputes. He alongwith his nephew, the informant, PW-9, Lilo Mahto and Punit Mahto were in one party and the appellant, Gopi Mahto and others were in another party. The cases regarding landed properties are still pending in the Court. Thus, the enmity was alongwith Lilo Mahto, his brother, Sahdeo Mahto (the deceased), Punit Mahto and the witness, Chaturi Mahto also. But only Sahdeo Mahto was murdered leaving Punit Mahto and Chaturi Mahto. No one has pelted stones on their houses nor their houses were surrounded by the appellants. PW-6, Lakhan Mahto, brother of the informant and son of the deceased, in Para 5 has deposed that he does not know the reasons as to why the appellants surrounded the house of his uncle, Punit Mahto, and also his house. He has specifically averred that there was no enmity in between his family members and the appellants. PW-9, Lilo Mahto, the informant, has deposed that cases were pending against Gopi Mahto regarding landed properties since two years prior to the alleged occurrence. His cousin brother, Banwari Mahto, has been alleged that he managed some gundas and with their help Gopi Mahto was assaulted on his way in village Pathrapur. But this statement could not be corroborated by the interested witnesses of his family itself. When considered all these facts, I find that the prosecution could not substantiate the genesis of the alleged occurrence.

11. Now I take up as to whether the closely related witnesses are interested witnesses and as to whether in absence of corroborative evidence of the independent witnesses available in the village, their evidence can be relied in the facts and circumstances of this case and as to whether all the appellants who have been convicted and sentenced with the aid of Section 149 IPC, can be substantiated. PWs-1, 2, 3, 4, 5, 6 and 9, who are of the same family of the deceased and closely related, claimed themselves to be the eye-witnesses of the alleged occurrence and also the manner of the alleged occurrence. PW-1, Brahmdeo Mahto, son of the deceased, is a disabled person who can not move. In the eventful night he was on the verandah outside the room of his father, Sahdeo Mahto (since dead). The informant, PW-9, Lilo Mahto, son of the deceased, claims that he saw the entire occurrence from a short distance after managing to escape at 6 a.m. on 28.6.87. He claims that throughout the night his brothers and females alongwith the deceased father remained in the home. The appellants surrounded his house throughout the night till 6.30 a.m. They had pelted stones on their house. The appellants did not allow any of the inmates to come out of the house. Even then, PW- 9, Lilo Mahto, claims that he managed to escape through the roof of the house at 6 a.m. and at a short distance he turned back and witnessed the entire occurrence. He claims that he saw that the appellants breaking open the doors of the room in which his father, Sahdeo Mahto" was sleeping. Ten appellants entered through the Western wall after demolishing it and ten appellants entered through the Northern door when it was opened by the other appellants. The house of the informant is surrounded with verandah in three inner sides, except the Northern side which is the main exit of

the house. In- the verandah, outside the room of Sahdeo Mahto, PW-1 was sitting. PW-1, Brahmadeo Mahto heard a commotion regarding pelting of stones on the house of his uncle, Punit Mahto. Thereafter, they surrounded his house after pelting stones till 6.30 a.m. At 6,30 a.m. they demolished the Western wall of the house. He identified all the twenty accused who are the appellants. They uprooted the doorplanks of the room of his father. They started assaulting his father and brought him in the verandah. He has deposed that Gopi Mahto firstly assaulted with lathi on the leg of his father. When his father fell down then the appellant, Ramdayal Yadav and Raj Kumar Yadav gave bhala blows to his father. There after, his father was dragged and taken to the Angan. This statement that Gopi Mahto assaulted his father firstly with lathi then when his father fell down then the appellants, Ramdayal Mahto and Raj Kumar Mahto gave bhala blows, has also been corroborated by PW-3, Sudama Devi. PW-4, Bindua Devi, although she has deposed that there was a talk in the village that dacoity was committed in the house of Sahdeo Mahto in which the dacoits murdered Sahdeo Mahto. As the witness, PW-1, is a disabled person and is unable to move, he remained throughout the night till morning when the alleged occurrence took place. He has deposed that the informant, Lilo Mahto, and his brother, Lakhan Mahto, who are PWs-9 and 6 respectively, were not at home throughout the night. PW-6 and PW-9 have also deposed that they managed to escape and went to the house of their uncle, Chaturi Mahto. PW-5. Both the witnesses, PWs-6 and 9, have deposed that there was no one in the house of Chaturi Mahto. Although both the brothers, PWs- 6 and 9, had gone to the house of PW-5, Chaturi Mahto; they could not see each other. PW-5, Chaturi Mahto, remained throughout the night on the roof of his house. He did not see PW-6 and PW-9 in his house or outside his house. The wives of Lilo Mahto and Lakhan Mahto remained closed in their rooms throughout the night. Only 5 appellants namely, Gopi Mahto, Ramdayal Mahto, Shambhu Yadav, Manik Yadav and Rajkumar Yadav, entered into the room of his father. They dragged his father out of his room assaulting him. The other appellants entered into other rooms and looted the household articles, boxes, cash, ornaments etc. When the evidence of this witness is considered then the other closely related witnesses had not seen the alleged occurrence and the manner of the alleged occurrence which occurred inside the room. PW-3, Sudama Devi, PW-4, Bindua Devi and PW-2, Gunjri Devi remained closed inside the room. Hence, it is impossible that they had seen the appellants entering into the room of their father-in-law, Sahdeo Mahto and assaulting him. As deposed by PW-1, they remained at a distance of 15-20 feet from the room of Sahdeo Mahto. When the house of the informant was surrounded by the accused-appellants then how PW-6, Lakhan Mahto and PW-9, Lilo Mahto managed to escape in the morning at 6 a.m., has not been cleared. Moreover, there is definite averment of the witnesses that at 6.30 a.m. the appellants demolished the Western wall of the house and entered into the rooms. PW-2, Gunjri Devi has deposed that Kishun Mandal had sabal, Nanhku Mandal had gaita, Ramdayal Mahto and Raj Kumar Mahto had possessed bhala and the rest appellants had lathi. There is no evidence that except Ramdayal Mahto and Rajkumar Mahto,

who are alleged to have given bhala blows and appellant, Gopi Mahto, who has alleged to have given lathi blows, the others appellants have not taken any part in assaulting Sahdeo Mahto although they are alleged to have possessed with lathi. Only five appellants entered into the room of Sahdeo Mahto, namely, Gopi Mahto, Ramdayal Mahto, Rajkumar Mahto, Shambhu Yadav and Manik Yadav who assaulted Sahdeo Mahto inside the room and dragged the dead body outside the room and took in the Angan. The other accused-appellants are alleged to have entered into the other rooms and looted cash, ornaments and documents. Thus, the object to cause the murder of Sahdeo Mahto was not common as the other accused-appellants had not entered into the room of Sahdeo Mahto nor they had assaulted Sahdeo Mahto with any means of assault. PW-2, Gunjri Devi, claimed that her father-in-law was brought out in the courtyard where Gopi Mahto assaulted with lathi on his leg. When her father-in-law fell down then Ramdayal Mahto and Ram Kumar Mahto gave bhala blows on his person. She does not know as to where Lakhan Mahto and Lilo Mahto had gone at night. Whereas, Lilo Mahto and Lakhan Mahto have deposed that they were inside the house throughout the night along with their females and in the morning at 6 a.m. they came out of the house, which gets contradicted by the closely related witnesses who are also interested as there is dispute regarding landed properties with the appellant, Gopi Mahto. PW-2 has stated that her father-in-law, Sahdeo Mahto, was assaulted in the courtyard. PW-3, Sudama Devi, who is the wife of the informant, has claimed that at home she and other family members including her husband and other brothers of her husband along with father-in-law were in the house at night. On 28.6.87 at 6,30 a.m. the appellants broke open the Western wall and entered.

They opened the door and some of the appellants entered through the door. They also uprooted the door planks of the room in which her father-in-law was sleeping. They dragged her father-in-law in the verandah, Gopi Mahto gave lathi blows on the leg of Sahdeo Mahto. When he fell down then Ramdayal Mahto and Raj Kumar Mahto gave bhala blows and the others assaulted with lathi. Her father-in-law succumbed to those injuries. In the same Para 7, she had deposed that when the appellants started pelting stones on her house she entered into her room and closed the door from inside. She and her husband remained closed inside the room. Similarly Lakhan Mahto and his wife also remained closed in their rooms. When they came out of the room in the morning after sleeping for an hour they again saw pelting of stones on their house and breaking open the Western wall. She did not go inside the room of her father-in-law and has deposed that her father-in-law was injured in the verandah where he died. She claimed that 18 accused assaulted with lathi to her father-in-law which does not get support by any other witnesses, PW-4, Bindua Devi, wife of the informant, has contradicted by stating that at night neither her husband, Lilo Mahto nor her Bhaisar, PW-6, Lakhan Mahto, was at home rather on 28.6.87 at 12 noon they were seen in the courtyard when the police had gone there. They were informed by PW-1, Brahmedeo Mahto, regarding the manner of the alleged assault and the

occurrence. She claims that her father-in-law was assaulted in the verandah which gets contradicted by the evidence of PW-1 that the door planks of the room of his father, Sahdeo Mahto, were uprooted. Five appellants entered and caused murder of his father but this witness, PW-4, had deposed that inside the room her father-in-law was not assaulted and murdered. She has deposed that PW-1, PW-2, PW-3 and herself (PW-4) saw the manner of the alleged occurrence. There is vital contradiction as to where Sahdeo Mahto was assaulted and where he died. PW-1, a disabled person, remained in the verandah. He is the best eye-witness to have seen the alleged occurrence but he has deposed that he could not move due to his disablement. Hence, he also can not be said to be the eye-witness of the manner of the alleged assault on his father who was assaulted inside the room. He informed the other inmates of the family regarding the manner of the alleged assault. The contradictory statements of all the interested witnesses create doubt as to whether these appellants had entered into the house and out of them some appellants assaulted Sahdeo Mandal resulting his death. PW-4 has deposed that in the village there was commotion that dacoity was committed in the house of Sahdeo Mahto and in that dacoity Sahdeo Mahto was murdered by the dacoits. This assertion made by PW-4, Bindua Devi, wife of the informant, seems to be probable as the alleged occurrence did not take place due to landed properties or assault on Gopi Mahto in between Pathar-pur village while he had went to market. In this present case none of the village independent witness has been examined by the prosecution. Even the interested witnesses, Banwari Mahto and Punit Mahto, have not been examined in this case. PW-5, Chaturi Mahto, is the full brother of the deceased who claims to be the eye-witness to have witnessed from the roof of his house. He does not know whether PW-6 and PW-9, Lakhan Mahto and Lilo Mahto respectively, had gone to his house at night as claimed by them. These statements also belie the conduct and statement made by PW-6, Lakhan Mahto and PW-9, Lilo Mahto. As the house of the informant consists of verandah in three sides and courtyard in the middle, it is not possible that this witness, PW-5, have witnessed the entire occurrence from the roof of his house. On the other hand, he has admitted in Para 5 that he is hard of hearing and has also got poor eyesight. On the other hand, he has deposed that his house was not surrounded by any of the accused. The house of Punit Mahto was also not ransacked. Although the accused pelted stones firstly on his house but Punit Mahto has not come forward to depose that accused abused him and pelted stones on his house in the night of 27.6.87 at 8 p.m.. PW-9, the informant, has deposed that he had not seen assaulting his father and was informed about the alleged occurrence by his brother, PW-1, Brahmedeo Mahto. He had met Punit Mahto, Ramdeo Mahto and Gopal Mahto in the village on 28.6.87 when the police had gone there. But their statements were not recorded by the IO, PW-10, K.K. Mishra. The IO, K.K. Mishra, recorded the fardbeyan, (Ext. 2) of Lilo Mahto. He prepared inquest report, Ext. 4, of the dead body of Sahdeo Mandal. He found the Western wall broken. The door of the room of Sahdeo Mahto was uprooted. He saw bricks and stones hither and thither. First of all he was informed by Banwari Mahto about the alleged occurrence whose

statement was not recorded nor he was made any witness rather on his statement he entered SDE No. 355 on 28.6.87 at 9.30 a.m. and proceeded to the PO village, Petadauli and reached there at about 12 noon. He did not record the statement of Chaturi Mandal, Punit Mandal, Gopal Mandal and Ramdeo Mandal who are the eye-witnesses of the village nor they have been shown as charge sheeted witnesses. PW-2, Gunjri Devi, has not stated before the IO, PW-10, that she had seen the accused pelting stones on the house of Punit Mahto and thereafter, in the morning at 6.30 a.m. they entered into her house, she has not stated that Gopi Mahto assaulted with lathi on the leg of her father-in-law. When he fell down then the appellant, Ramkumar Yadav and Ramdayal Yadav gave bhala blows on his person resulting his death. Similarly, PW-4, Bindua Devi, has not stated before the IO u/s 161 Cr. PC that her father-in-law was murdered inside the room where he was sleeping and not in the verandah. She has not stated that she alongwith other two Gotanies and PW-1 saw the entire occurrence. PW-5, Chaturi Mahto, has also improved his statement in course of deposition in the Court who has not stated before the IO that 20 accused armed with lathi and bhala entered into the house of the informant at 6.30 a.m. Similar is the statement of Lakhan Mahto, PW-6, PW-11, Dr. N.K, Addi, on 29.6.87 conducted autopsy on the dead body of Sahdeo Mandal and found the following eight ante mortem injuries on the dead body of Sahdeo Mahto; (i) Fracture of the lower end of tibia and fibula of left leg. (ii) Fracture of right radius ulna of forearm, (iii) Swelling of the dorsum of the left hand 4"x 4". (iv) Multiple bruises on left thigh having size 5" x 1" and 4"x 1/2" and 4"x 1". All bruises were present anteriorly, (v) One lacerated wound on occipital region of scalp 1 1/2"x 1/2"x muscle deep. Swelling all round on left ear. There was no intracranial injury, (vi) Bleeding from left nostril, (vii) One perforated wound on the fifth intercostals space on anterior chest wall on right side adjacent to sternum which communication with the right plural cavity and caused laceration of the middle lob of the right lung and bleeding into the right plural cavity. The subcutaneous tissues around the wound show multiple clots. Size of wound 2"x 1/2"x communicating with plural cavity, (viii) One perforated wound on 6th intercostals space on back of the chest wall on left side which leads into fracture of 7th costal rib on back and it communicates with left plural cavity. There was laceration of the lower lob of the left lung and it leads into collection of blood into left plural cavity. Size of the external wound 1 1/4"x 1/2"x communicating with left plural cavity. The doctor opined that the death was due to haemorrhage and shock as a result of the above injuries caused by sharp penetrating pointed weapon like bhala. Injuries No. 1-5 were caused by hard and blunt substance. The time elapsed since death was about 26 hours from the time of postmortem examination which was conducted at 9.15 a.m. He prepared postmortem examination report, Ext. 5, in his pen and signature. PWs- 7 and 8, Shambhu Mahto and Nanhku Mahto, respectively, are the witnesses on the inquest-report. The alleged death due to the injuries sustained by the deceased and the postmortem report on which witnesses, PWs-7 and 8, have signed, clearly go to prove the death of Sahdeo Mahto. The appellants have not challenged the death

of Sahdeo Mahto rather they have denied their involvement in causing murder of Sahdeo Mahto and have stated that they have been implicated in this case due to enmity.

12. To sum up as I have discussed earlier that Lilo Mahto, PW- 9, the informant, and his brother, Lakhan Mahto, PW-6, were not present throughout the night of the alleged occurrence although they had claimed that at night they were in the house and in the early morning at 6 a.m. on 28.6.87 both of them escaped and went to the house of PW-5, Chaturi Mahto. Chaturi Mahto has denied that both these witnesses, PWs-6 and 9, were in his house rather no one was in his house and he himself remained throughout the night on the roof from where he alleged to have seen the entire occurrence. Brahmdeo Mahto, PW-1, who is a disabled person, remained throughout the night in the verandah. He narrated the story to the informant and others. Lilo Mahto the informant, claims that he has not seen any assault made by the appellants on his father, Sahdeo Mahto. Brahmdeo Mahto (not examined), cousin brother of the informant, was coming with the police officer, PW- 10. But PW-10, K.K. Mishra, the IO, has deposed that he simply entered SDE on his statement and proceeded to PO village, Petadauli. On his way he met the informant, Lilo Mahto, who had also gone to inform the police. At that time his statement was not recorded rather at home at about 12 noon Lilo Mahto, gave his fardbeyan. Prior to his statement, Brahmdeo Mahto, PW-1 and three females, PW-2, Gunjri Devi, PW-3, Sudama Devi and PW-4, Bindua Devi, were examined by the IO. Thereafter, he recorded the statement of Lilo Mahto which is the alleged fardbeyan, Ext. 2, which can not be the FIR. Moreover, the informant and the other inmates who are closely related, have given contradictory statements regarding the presence of PW-6, Lakhan Mahto and PW-9, Lilo Mahto at their home; when the alleged occurrence took place. They are not the eyewitnesses as deposed by them that they watched the entire occurrence from the house of Chaturi Mahto whereas, Chaturi Mahto had not seen them in his house even in the morning of 28.6.87. PW-1. Brahmdeo Mahto, claims that all the females, PWs- 2, 3, and 4, were sleeping inside their rooms after locking the doors, hence they are not the eye-witnesses of the alleged occurrence. PW-1, Brahmdeo Mahto, a disabled person, saw five appellants breaking open the door of the room in which his father, Sahdeo Mahto, had slept. He could not see as to who assaulted his father resulting his death. He simply saw dragging the dead body outside the room. When all the evidence are considered in totality this PW-1, Brahmdeo Mahto, is also not the eye-witness of the alleged occurrence. The entire episode occurred only due to an allegation that Banwari Mahto with the help of other associates, assaulted Gopi Mahto near the village Patharpur. Had that been the genesis of the alleged occurrence, then; Banwari Mahto and his house should have been pelted but that is not the case. There is land dispute in between the parties. The appellants are alleged to have pelted on the house of Punit Mahto. But they did not ransack his house rather they shifted to the house of Sahdeo Mahto. In the family of Sahdeo Mahto no one sustained injury except that Sahdeo Mahto was murdered. The land dispute

is also with Punit Mahto, Chaturi Mahto and Sahdeo Mahto who are in one side in the suit regarding the land dispute. Neither Chaturi Mahto nor Punit Mahto nor Banwari Mahto sustained any injury nor any attempt was made to injure them by these appellants. PW-4 in Para 5 has deposed that there was no enmity with the appellants. PW-4, Bin-dua Devi, has deposed that there was commotion in the village regarding a dacoity committed in the house of Sahdeo Mahto in which Sahdeo Mahto was murdered. PW-1, Brahmdeo Mahto, has deposed that the alleged occurrence was not committed due to the alleged assault on Gopi Mahto. He has further deposed that he saw the appellants. Gopi Mahto, Ram-dayal Mahto, Shambhu Yadav, Manik Yadav and Rajkumar Yadav, entering into the room of his father. The other appellants entered into the other rooms; Hence the common object to attract Section 149 IPC has also not been proved by the prosecution. The genesis of the alleged occurrence has also not been proved as the closely related witnesses themselves have contradicted by stating that due to the alleged assault on Gopi Mahto the alleged occurrence did not take place. Moreover, they had no enmity with the appellants even though there is pending case regarding the land dispute. That was also not the cause of the alleged murder of Sahdeo Mahto. When considered all these "facts and evidence brought on record, I find that the fardbeyan, Ext. 2, is concocted and embellished story only to implicate these appellants who had land dispute with him. The earlier information given to the police by Banwari Mahto and Brahmdeo Mahto have purposely been suppressed. Even Lilo Mahto was not examined firstly who met the IO on his way to PS. On the other hand, the alleged fardbeyan, Ext.2, was recorded at 12 noon on 28.6.87. All these conducts of the IO and the informant, PW-9, Lilo Mahto, create doubt regarding the complicity of these appellants in committing the alleged occurrence. The independent witnesses who were available in the village have also not been examined by the prosecution. On the other hand, only closely related and interested witnesses of the one family have been examined who have given contradictory statements regarding the presence of PWs-6 and 9 at home in the eventful night and regarding first information given to the police. Brahmdeo Mahto had informed the police but simply SD Entry was made. Only to suppress the real fact Banwari Mahto has not been made a witness in this case. Rather only the interested witnesses, closely related, have been examined by the prosecution. The learned 1st Additional Sessions Judge, Chatra placed his reliance on the statement of closely related and interested witnesses and erroneously came to the conclusion that the fardbeyan, Ext. 2, is the FIR and the informant is the eye-witness along with the other members of his family. No doubt closely related witnesses if natural, then their evidence can not be discarded only on this ground. In this present case there are conflicting statements of these interested witnesses, who are closely related, regarding the manner of the alleged occurrence and the presence of the informant and his brother, PW-6, Lak-han Mahto, in the house. On the other hand, there are contradictory statements of all the three brothers who remained closed inside the room with their females and had slept for an hour at night. Thus, the contradictory statements go to lead that none of these witnesses is the

eyewitness and is reliable witness. The genesis of the alleged occurrence is also doubtful. On the other hand, there was a commotion in the village regarding commission of dacoity in the house of Sahdeo Mahto and in that dacoity Sahdeo Mahto was murdered. This is the possibility and the informant found opportunity to implicate all these appellants, who are of the same village, in a case whose fardbeyan was recorded subsequently on 12 noon on 28.6.87 at village Petadauli, although prior to his information, Banwari Mahto* (not examined) had informed the police and was going to PO village with the police. The IO. first examined Brahmdeo Mahto, PW-1, thereafter, three females, PWs- 2, 3, and 4 and then he recorded the fardbeyan of PW-9, Lilo Mahto which is no doubt a substituted FIR. Moreover, Lilo Mahto himself is not the eye witness as I have stated above. When considered all these aspects, I find that the conviction and sentence passed by the 1st Additional Sessions Judge, Chatra suffers from legal infirmity which can not sustained.

13. When considered all the pros and cons of the prosecution case, the evidence of only closely related and interested witnesses and probabilities of the case, I am of the opinion that the prosecution has miserably failed to prove the charges levelled against all the appellants u/s 302 read with Section 149 IPC and under Sections 448 and 380 IPC beyond all shadows of reasonable doubts, hence the appellants deserve to be given benefit of doubt.

14. In the result, I find merit in this criminal appeal which succeeds and is, hereby, allowed and the impugned Judgment and order of conviction and sentence passed by the learned Court below is, accordingly, set aside. As the appellants No. 1,2, and 12, namely, Ramdayal Yadav, Raj-kumar Yadav and Mishar Yadav @ Mishar Gope respectively, are in custody, they are ordered to be released forthwith from the custody if not wanted in any other case. The other appellants, who are on ball, are discharged from the liability of their bail-bonds furnished in this case.

S.J. Mukhopadhaya, J.

15. I agree. Appeal allowed.