
(2005) 02 PAT CK 0090

In the Patna High Court

Case No : Criminal Appeal Nos. 476, 518 and 522 of 1977

Sekhu Yadav and Another etc.

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 08-02-2005

Acts Referred:

Citation : (2005) 02 PAT CK 0090

Judgement

Mridula Mishra, J.—All three appeals referred to above arise out of one and the same judgment and order dated 19-9-1997, passed by the 2nd Additional Sessions Judge, Begusarai in Sessions Trial No. 386, of 1994 convicting the appellants Sekhu Yadav and Pinku Yadav (Cr. Appeal No. 476 of 1997) under Sections 302/149 of the Indian Penal Code. Garib Das Yadav alias Upendra Yadav and Dano Yadav (Cr. Appeal No. 518 of 1997), Rampati Yadav (Cr. Appeal No. 522 of 1997) u/s 302 of the Indian Penal Code. All appellants have been sentenced to rigorous imprisonment for life. Appellants in all the three appeals have further been convicted u/s 27 of the Arms Act and have been sentenced to R. I. for three years.

2. The case of the prosecution as spelt out in the F. I. R. is that on 5-3-1994 at 3.30 p.m. Gulo Yadav brother of informant Ram Pratap Yadav (P.W.7) was carrying eight bags of oil seeds of one Debo Sah on a bullock cart to Ballia. The informant (P. W. 7) and his nephew Dilip Kumar son of Gulo Yadav were following the bullock cart. When the bullock cart reached near the field of Basudeo Yadav suddenly accused Sekhu Yadav, Dano Yadav, Pinku Yadav Garib Das Yadav alias Upendra Yadav and Rampati Yadav came armed with country made rifle whereas the remaining accused were armed with country made pistol. Seeing the accused persons elder brother of the informant Gulo Yadav jumped from bullock cart and started fleeing away towards east south through the fields. Accused persons started chasing him by making shots of pistol and rifle on Gulo Yadav. Ultimately the accused persons surrounded Gulo Yadav towards north of the house of Kesho Yadav. The informant (P.W.7) was also following the accused persons and raising alarm. After Gulo was surrounded by accused persons towards the north of the

house of Kesho Yadav, Sekhu Yadav ordered to shoot Gulo Yadav, whereupon Dano Yadav made a shot of pistol on the back of his brother Gulo Yadav, Pinku Yadav fired from his pistol on the palm of Gulo Yadav, who fell down after making a cry. Thereafter Garib Das Yadav fired his pistol on the temporal region of Gulo Yadav and Ramapati fired from his rifle on the back of Gulo Yadav. The informant (P.W.7) started crying and thereafter the accused persons fled away towards their house. The motive for the occurrence as stated in the Fard beyan was the purchase of five bigba of land by Gulo Yadav from Chet Narain Yadav in his mother's name in the year 1982. Accused persons also wanted to purchase the same land as they had land adjacent to that land.

3. On the basis of this fard beyan which is said to have been recorded on 5-3-1994 at 21 hours in village Partarpur at the house of Kesho Yadav, the case was instituted as Sahebpur Kamal P. S. Case No. 22 of 1994 under Sections 148, 149, 324, 302 of the Indian Penal Code and 27 of the Arms Act. The fard beyan was recorded by S. I. Rajendra Singh (P. W. 6). He conducted the investigation recorded statement of the witnesses, seized blood stain soil sent the dead body for post-mortem, completed the investigation and submitted chargesheet. On the submission of chargesheet cognizance was taken, case was committed to the Court of sessions and on completion of trial the accused persons have been convicted as stated above.

4. The defence of the appellants is of false implication. They completely denied the accusation levelled against them as disclosed in the F. I. R. They stated that due to land dispute they have falsely been implicated in this case when the fact is that Gulo was a veteran criminal named in several murder, dacoity and serious cases. He and his family members who have been examined as witnesses in this case are active members of notorious criminal gang of Kailu Yadav. Gulo Yadav was killed by some other the accused/appellants with whom there was land dispute have falsely been implicated and a false case has been instituted. The defence also exhibited certain documents like Ext. A, A/1, A/2 and Ext. A/3 to substantiate their defence which indicated cases instituted against deceased Gulo Yadav under Sections 395, 396 and 302 of the Indian Penal Code.

5. The prosecution in order to bring home the charges examined seven witnesses. P W. 1 Panchu Yadav is the uncle of the deceased. He is also named in the F. I. R. as witness, P. W. 2 Bhubneshwar Yadav is the cousin of the deceased. P. W. 2 and P. W. 7 are nephew of P. W. 1. It has been stated by the defence that P. W. 2 Bhubneshwar Yadav is the person responsible for implicating the accused appellants in the present case as he is an advocate's clerk. He did not get himself examined as an eye witness, but has been examined as an inquest witness. P. W. 3 Raja Ram Yadav is the son of P. W. 1 and cousin of P. W. 2, P. W. 7 and the deceased. He has been examined as an eye witness. P. W. 4 Dr. Raja Rajeshwar Pd. Sinha has conducted post-mortem on the dead body of the deceased. P. W. 5 Singheshwar Yadav is a chance witness who has been examined as an eye witness. He is also related to the deceased and the

witnesses. P. W. 6 Rajendra Singh is the I. O. of the case and P. W. 7 Ram Pratap Yadav is the informant of this case who is the younger brother of the deceased, cousin of P. W. 2, 3 and P. W. 5 and nephew of P. W. 1.

6. P. W. 1 has stated that at the time of occurrence he was coming from eastern field with the bundle of oil seeds. When he reached near the house of Kesho Yadav he saw five persons chasing Gulo Yadav. They were Dano Yadav, Pinku Yadav, Garib Das Yadav, Shekhu Yadav and Rampati Yadav. Garib Das Yadav and Rampati Yadav were armed with rifle and rest of the accused were armed with country made pistols. Shekhu ordered to kill on which Dano Yadav fired at the back of Gulo Yadav, Pinku Yadav fired on the right palm of Gulo and he fell down. Garib Das fired at the temporal region of Gulo Yadav and Rampati fired at his back. The I. O. came at the place of occurrence, prepared inquest report and he also put his signature on it which is Ext. 1. A suggestion was given to P. W. 1 that he along with Raja Ram Yadav (P.W.3) deceased Gulo and P. W. 5 were named accused in several criminal cases and they belonged to notorious criminal gang of Kailu Yadav, which was denied. In paragraphs 6 and 7 of his cross examination P. W. 1 has admitted that there are houses of several persons near the house of Kesho Yadav where the occurrence took place. P. W. 1 has stated that on the date of occurrence he had gone to oil seed field at 9 A. M. along with labourers for harvesting the crops. After harvesting, crops were bundled and were being carried to the Khalihari. Last two bundles were being carried by him and his son P. W. 3 when the occurrence took place and they could not carry bundles upto the Khalihan. On that date oil seeds were being harvested in other adjacent field and 20-22 persons were watching the occurrence from their fields. Pinku fired at him also as he was standing at a distance of one rassi from Gula Yadav. Accused persons were firing indiscriminately while chasing Gulo, who even after receiving first shot continued running. Accused persons opened fire one after another. Pinku had fired at Gulo from a distance of 8 laggi but Garib Das had fired at him from blank range distance. Garib Das and Rampati Yadav were firing at Ghulo even when he was being chased. Blood has started oozing from the injury of Gulo Yadav, just after he received first shot Kesho and other persons residing in the neighbouring houses came out of their houses. I. O. came at 8 P. M. and at that time 10-20, persons were present there and I. O. recorded the statement of those persons. He has stated before the I. O. that he saw five persons chasing Gulo Yadav. Pinku Yadav and Garib Yadav were also among them. P. W. 1 has also stated that Chowkidar and his cousin Ram Prakash had gone to police station for giving information about the occurrence. P. W. 1 has denied the suggestion that the Gulo was an active member of a criminal gang belonging to Kailu Yadav Group. P. W. 2 is an advocate clerk. He received information about the occurrence at Begusarai at 3 A. M. as his brother Ram Sagar, had come to give him information. At 6.30 P. M. he reached village Pratarpur and whereafter the I. O. also arrived. I. O. recorded his statement and statement of other witnesses. He prepared inquest report and P. W. 2 put his signature on the inquest report Ext. 1/1. P. W. denied the suggestion that he is instrumental in

instituting a false case against the accused persons. He has admitted that the deceased was his cousin. P. W. 3 Raja Ram Yadav is the son of P. W. 1. He has stated that on the date of occurrence at 3.30 P. M. he was returning to his home with the bundle of harvested mustard crops. Near the house of Kesho he saw that Gulo was being chased by Sekhu, Dano and Garib Das alias Upendra Pd. Yadav. Sekhu and Pinku were armed with pistol and all others were armed with rifle. On the order of Sekhu, Dano opened shot which hit at the back of Gulo Yadav. Pinku fired at right hand and Gulo fell down. Garib Das fired at right temporal region and Rampati fired a back of Gulo. Accused persons left the place after the death of Gulo. P. W. 3 has admitted that there was land dispute in between the parties. He has further stated that the I. O. recorded the fard beyan of informant at the place of occurrence. He also put his signature on fard beyan (Ext. 1/4). I. O. had seized blood stained soil from the place of occurrence. He put his signature also on the seizure list (Ext. 1/5). Bubaneshwar (P. W. 2) also put his signature on the inquest (Ext. 1/6). He has admitted that he is named as an accused in criminal case, but has denied the suggestion that the deceased Gulo was accused in several murder and dacoity cases and was an active member of Kailu Yadav's criminal gang. P. W. 3 has also stated that houses are there adjacent to the house of Kesho Yadav. The mustard field from where he was coming is at the distance of 1/2 km. from his house and on that date he, his father and three labourers namely Anup Lal Yadav, Kapil Das Thakur and Ram Bilas had gone for harvesting the crops. The crops were bundled and being carried by all of them, he was ahead of his father and labourers were behind him when he saw Gulo from a distance of 1 rassi. Gulo was running from north to west. 8-10 persons were watching the occurrence among them he identified Angeshwar Yadav, Devo Yadav, Dilip Kumar, Ram Pratap Yadav, Rambahadur Yadav. He threw the bundle near the house of Kesho Yadav and on the next day in the morning he had shown it to the I. O. He and his father ran towards accused persons, but the labourers fled away towards north. He did not make any attempt to save his cousin Gulo. Accused did not open fire at him, but they fired at his father. Gulo was surrounded by accused near the house of Kesho Yadav. The accused persons fired at Gulo from a distance of 8-10 laggi. Dano fired by putting his pistol on the back of Gulo. I. O. came at the place of occurrence at 5 P. M. Ram Prakash Yadav and Chowkidar had gone to police station to give information about the occurrence. I. O. came at the place of occurrence along with them. His statement was recorded by the I. O. in the night itself. I. O. had seized blood stained soil from on place only where the dead body was lying. He denied the suggestion that he had not seen the occurrence as he was not carrying the bundle of oil seeds at that time. Gulo was killed because of enmity with Bishwanath and also because he was a notorious criminal.

7. P. W. 4 is the doctor Raja Rajeshwar Prasad Sinha. He has stated that on 6-3-1994 he was posted at Sadar Hospital Begusarai as Civil Assistant Surgeon. At 6.50 A. M. he performed post-mortem on the dead body of Gulo Yadav and found following ante-mortem injuries :--

(i) Wound of entry on the middle of the left palm 1/2" x 1/2" margins lacerated burnt out and inverted.

(ii) Wound of exit of left wrist 1/4" x 1/4" everted margin communicating with injury No. 1.

(iii) Wound of entry over the left temple region of the head in front of the pinna 1/2" x 1/2" x cranial cavity deep margin burnt out and inverted.

(iv) Wound of exit over the left temple region of the head 4" x 4" everted and lacerated margin. Brain matter coming out from the wound. On dissection the left and right temple bone was fractured. There was sub-dural Hematoma both hemisphere of the brain was badly lacerated.

(v) Wound of entry at upper part of the back at the level of T2 vertebra 1" x 1/4" x chest cavity deep margin lacerated and burnt.

(vi) Wound of exit over the left front of the chest below the middle of the right clavicle 1/2" x 1/2" lacerated and everted margin. This wound communicated with injury No. V. On dissection the left lung was ruptured in the upper part. There was hemothorax in the left side.

(vii) Wound of entry at the back right side of vertebral column at the level of T8 vertebra 1" x 1/2" x chest cavity deep, margin were inverted and burnt out. On dissection there was rupture of liver and a bullet was found beneath the skin over the middle of sternum after fracturing sternum.

The death was caused due to hemorrhage and shock due to injury Nos. 3, 4, 5, 6, and 7 caused by fire arm. Time elapsed since death were 6-24 hours. P. W. 4 in his cross examination did not say about the distance and direction by which the injuries were caused.

8. P. W. 5 has stated that on the date of occurrence at 3.30 P. M. he saw that five persons namely Sekhu, Pinku, Dano, Garib Das Yadav alias Upendra Yadav and Rampati Yadav were chasing Gulo Yadav, Dano Sekhu and Pinku were armed with pistol. Garib Das and Rampati had rifles in their hands. The accused were chasing Gulo from east south direction when Gulo reached near the house of Keshu, Sekhu ordered to shoot on which Yadav. Pinku also fired which hit at the right hand of Gulo Yadav. Sekhu also opened aerial fire and Gulo Yadav fell down at the darwaza of Keshu Yadav where Garib Das fired on his right temporal region and Rampati fired at his back. He has denied the suggestion that he and his family members are named accused in several murder and dacoity cases and all his three sons are in custody in connection with the murder of Shankar Yadav. P. W. 5 has stated that at the time of occurrence he saw 15-20 persons who came at the place of occurrence on hearing the alarm. Gulo was being chased by the accused persons and during the chase Gulo had received first, shot when he was at a distance of 2 laggi from the house of Keshu, but he kept on running. He received second shot at the darwaja of Keshu Yadav and there he fell down. Not less than 15 persons had assembled after the death of Gulo Yadav. Laxmi

Chowkidar and Ram Prakash Yadav were sent to police station for giving information. His statement was recorded by the I. O. same day at 9 P. M. He had stated before the I. O. that when Gulo Yadav reached near the darwaja of Kesho Yadav, Pinku had fired at him at his right hand. He has also stated before the I. O. about the aerial fire made by Sekhu and also that when Gulo fell at the darwaja of Kesho Yadav, Garib Das fired at him which hit at his right temporal region. He has denied the suggestion that he along with Gulo and his other family members were active member of the veteran criminal gang of Kailu Yadav.

9. P. W. 6 is the I. O. He has stated that on 5-3-1994 he was posted as A. S. I. at Sahebpur Kamal Police station. The Officer-in-charge received an information about some incident at village Partarpur and Sanha No. 166 was recorded. He came at village Partarpur along with the Officer-in-charge. Fard beyan of Rampratap Yadav was recorded by the officer-in-charge and he authorised P. W. 6 to investigate the case. Accordingly he recorded re-statement of the informant Ram Pratap Yadav (P. W. 1). He also recorded the statement of other witnesses and started investigation. He inspected the place of occurrence at village Partarpur which is the field near the house of Kesho Yadav. There are houses of Saudagar Yadav, Chathu Yadav, and Bengali Yadav in the boundary of the house of Kesho Yadav. He seized the blood stained soil in presence of the witnesses and prepared seizure list (Ext. 5), which was signed by Bhubaneshwar Yadav. He recorded the statement of Dilip Kr. Yadav, Panchu Yadav, Singheshwar, Devendra Yadav, Raja Ram Yadav, Kesho Yadav and Ram Bahadur Yadav. During investigation he came to know that in Sessions trial No. 118 of 1987 accused Rampati Yadav has been convicted u/s 302 of the Indian Penal Code. He obtained the post mortem report and on completion of the investigation submitted chargesheet. In his cross examination P. W. 6 has stated that the village Partarpur is at a distance of 12 K. M. west from Sahebpur Kamal police station. The house of informant is at village Panchrukhi which is adjacent to village partarpur the P. O. village. He admitted that, sanha entry No. 166 dated 5-3-1994 is not before him, but it has been mentioned at paragraph 25 of the case diary and from his memory he can say about the contents of Sanha entry No. 166, it related to exchange of fire in between two criminal gangs in which notorious criminal Gulo Yadav was killed. This information was received at the police station at 8 P. M. as rumor and the Officer-in-charge immediately started with the police force for village partarpur. P. W. 6 has denied that Balo Paswan had come at the police station for giving information about the occurrence. P. W. 6 expressed his inability to say about the number of cases in which Gulo Yadav was a named accused though he knew that Gulo was a notorious criminal. The place of occurrence was inspected by him in the night itself in the light of petromax. P. W. 6 has denied that P. W. 5 had stated before him that when Gulo Yadav reached near the Darwaja of Kesho Yadav, Dano Yadav shot at his right hand and also that Sekhu had opened an aerial fire and Garib Das had fired at temporal region of Gulo Yadav when he fell down near the darwaja of Kesho Yadav.

10. P. W. 7 Ram Pratap Yadav is the informant. He has stated that on 5-3-1994 Debo had hired his bullock cart. Bags of oil seeds of Debo were loaded on the bullock cart and was being taken to Balia for sale. The deceased Gulo Yadav was driving the bullock cart P. W. 7 and his nephew Dilip Yadav were following the bullock cart. Near the field of Basudeo Yadav 4-5 persons namely Sekhu, Dano, Pinku, Garib Das and Rampati came armed with pistol and rifles. As soon as Gulo Yadav saw them he jumped out of bullock cart and started running through the fields. Accused persons chased gulo and when he reached near the darwaja of Kesho Yadav, Sekhu Yadav ordered to shoot him. Dano Yadav opened fire which hit on the back of Gulo. Pinku also opened fire which hit on the left hand of Gulo Yadav and he fell down. After Gulo fell down Garib Das fired at him which hit at his left temporal region and Rampati fired which hit at his back and Gulo died. Occurrence took place because gulo Yadav had purchased 5 bigha of land from Chet Narain Singh in his mother's name, which is just adjacent to the lands of the accused persons which they also intended to purchase. Since they did not succeed in purchasing this land they nourished a grudge. The occurrence was witnessed by Panchu Yadav, Rajaram Yadav, Singheshwar Yadav and Ram Bahadurr Yadav. I. O. came at the place of occurrence, recorded his fard beyan and he put his signature on it. P. W. 7 has admitted his relationship with the witnesses and the deceased. He has expressed ignorance regarding the criminal cases pending against the deceased gulo Yadav and has denied that 12 cases of the murder and dacoity were pending against him. He has admitted that there are several houses adjacent to the house of Kesho Yadav. P. W. 7 has stated that Gulo Yadav had two sons Dipak and Dilip. At the time of occurrence Dilip was also going with him and the deceased to the market to sell the oil seeds of Debu Yadav. Debo Yadav had hired the bullock cart for carrying his bags of oil seeds to the market for which 8 rupees per bag was charged. They had loaded the oil seed bags at the shop of Debu Sah and on way to the market occurrence took place. Bullock cart and the bags containing oil seeds were left at the place of occurrence itself. Subsequently bags were reached at the shop of Debu Sah. I. O. was shown the bags and bullock cart. P. W. 7 has stated that he did not make any attempt to run away, though the accused persons were at a distance of 1 1/2 laggi. Gulo started running through the field, immediately, after he saw the accused persons. P. W. 6 has denied that the deceased had any enmity with Bishwanath Singh for purchase of some lands. P. W. 7 has denied that any person was sent to the police station for giving information about the occurrence. None of his family members went to the police station as they were busy in crying. P. W. 7 has stated that the I. O. started investigation just after reaching at the P. O. He inspected the dead body, and recorded his fard beyan. The dead body was removed from place of occurrence at 10-11 (sic) clock and he also accompanied the dead body. There were 40-50 persons present at P. O. when the I. O. reached there. He had stated before the I. O. about the bags of oil seeds belonging to Devo Sah which were being carried on the bullock cart, driven by Gulo. He has also stated before the I. O. that Pinku shot at the left hand of Gulo Yadav and Garib Das fired at right temporal region of gulo Yadav. He has also

stated before the police that Raja Ram witnessed the occurrence. P. W. 7 denied the suggestion that no such occurrence had taken place and Gulo Yadav was veteran Criminal. He forcibly wanted to grab the lands of Bishwanath Yadav. Gulo was killed in some manner but because of enmity the accused/appellants have been implicated.

11. The Judgment of conviction has been assailed by the counsel appearing for the appellants on several grounds. Firstly it has been stated that the prosecution has failed to examine all such independent witnesses who are named in the F. I. R. In the F. I. R. Singheshwar Yadav, Devendra Yadav, Ram Bahadur Yadav and Panchu Yadav have been named as witness. Dilip Yadav son of the deceased has also been shown as witness of the occurrence as he was following the bullock cart along with the informant P. W. 7 driven by the deceased. In the F. I. R. it has been stated that the deceased and the informant were carrying oil seed bags from shop of Devo Yadav for selling to the market at Balia. It has also been stated that the occurrence took place near the house of Kesho Yadav. During investigation Kesho Yadav, Devendra Yadav, Ram Bahadur Yadav, Debo Yadav and Dilip Yadav were examined by the I. O. but none of them have been examined by the prosecution in trial. They were the material witnesses and as per the prosecution story they were present at the place of occurrence, leaving these witnesses. Only related, interested and chance witnesses have been examined by the prosecution. The witnesses namely Panchau Yadav, P. W. 1, Bhubaneshwar Yadav, P. W. 2, Raja Ram Yadav, P. W. 3, Singheshwar Yadav, P. W. 5 and Ram Pratap Yadav, P. W. 7 all are related to each other and to the deceased. P. W. 1 Panchu Yadav in his evidence has admitted that P. W. 2 Bhubaneshwar Yadav is his nephew, P. W. 3 Raja Ram Yadav is his son, P. W. 5, Singheshwar Yadav and P. W. 7 Ram Pratap Yadav are also his nephew. The deceased was also his nephew. Since the prosecution has failed to examine reliable and independent witnesses without assigning any valid explanation for their non examination and considering the fact that only these witnesses who are interested and related have been examined, the trial Court should not have convicted the appellants relying on the evidence of such interested witnesses. Further, it has been submitted that from the evidence of P. W. 1, P. W. 3, P. W. 5, and P. W. 7 as well as the I. O. P. W. 6, it is clear that the occurrence took place near the house of Kesho Yadav, which is in the middle of the village. All the witnesses have stated that there are houses of several persons in the vicinity of the house of Kesho Yadav i.e. the place of occurrence. It has also come in the evidence of the witnesses that people residing in the neighbouring houses as well as the people who were working in the nearby fields were watching the occurrence, but none of them have been examined by the prosecution and no explanation for their non examination has been given. The I. O. in his evidence has stated that he recorded statement of those persons whose houses are in the vicinity of the place of occurrence. Their non examination clearly indicate that the prosecution intentionally withheld such witnesses who refused to support the concocted and fabricated prosecution story. Only those witnesses who are related

as well as who belonged to the same criminal group have been examined to support a false prosecution story. Further it has been argued that the way in which all interested witnesses have given a photographic description of the occurrence in court and repeated the incident in a parrot like manner also creates doubt about the reliability of the evidence of such witnesses. Witnesses have stated that Gulo Yadav jumped out of bullock cart as soon as he saw the accused persons. He started running through the fields. He was being chased by the accused persons who made indiscriminate firing while they chased Gulo Yadav. Gulo Yadav received first two shots, while he was being chased. Thereafter he fell down near the Darwaja of Kesho Yadav and was shot by Ramapati and Garib Das Yadav at his temporal region and at his back. Argument advanced by the appellants counsel is that when a person is being chased by five armed persons, who all were repeatedly firing then who fired at which part of deceased, giving vivid descriptions of such firing and making specific allegation against one or other accused is humanly not possible.

12. It has been argued that the occurrence has not been witnessed by any of the witnesses, but subsequently when the post mortem report was made available, the witnesses fixed liability of each injury to each one of the accused. Though each accused were assigned the responsibility of causing one injury each to the deceased, even then they failed to depose in complete conformity with the post mortem report. The witnesses have stated that the Dano Yadav fired at the back of Gulo while he was running through the fields and Pinku fired which hit at the hand of Gulo Yadav. This firing was also made when Gulo was being chased. Garib Das fired at temporal region of the deceased in his fallen condition and Rampati fired from his rifle from a distance of 8-10 laggi which hit on the back of the deceased. As per the post mortem report gulo Yadav received all injuries from a short range when the evidence of the witnesses is that the fire were made from long distance. Some of the witnesses have stated that Gulo received injury in his right palm and other has said that he received injury in left palm. Some of the witnesses have said that the injuries were in right temporal region and other witnesses said that the injury was on left temporal region. In sum and substance it is said that the witnesses were tutored after the post-mortem report was obtained and all of them in a parrot like manner have given vivid discription of the story of shots fired at the deceased. Such description cannot be relied as the witnesses are interested, inimical ommission and contradiction in their evidence are same and have repeated the incident in the similar manner.

13. Considering the fact that all the witnesses are interested and inimical and have deposed in parrot like manner it is not safe to place reliance on the evidence of such witnesses. In support of the argument reliance has been placed in the case of Dharam Singh and others Vs. State of Punjab, , wherein it has been held that the interested witness cannot be expected to give different version. However, as noted above the statement of each witnesses is verbatim the same as that of others. Contradictions and omissions are same. Narrations and sequence of events are meticulously in the same order. Therefore, we do not

think it safe to place reliance on the evidence of these witnesses.

14. Further it has been argued that P. W. 1, P. W. 3 and P. W. 5 in their evidence have stated that just after the occurrence Chowkidar and Jai Prakash nephew of P. W. 1, cousin of P. W. 3 and P. W. 5 went to police station for giving information about the occurrence. P. W. 5 has further stated that the I. O. came with the chowkidar and Jai Prakash Yadav. P. W. 6 the I. O. has denied that any one from the family of the deceased went at the police station for giving information. It was received by the Officer-in charge as rumor /relating to some firing incident in between two rival criminal groups in which notorious criminal Gulo Yadav has died. Accordingly Sanha entry No. 177 dated 5-3-1994 was recorded and immediately thereafter the Officer-in-charge proceeded for the place of occurrence. The argument has been advanced that the non production of this Sanha entry has caused serious prejudice to the defence considering the evidence of P. W. 1, P. W. 3 and P. W. 5 that the chowkidar and Jai Prakash Yadav one of the family member of the deceased, had gone to the police station for giving information and the I. O. came at the place of occurrence along with them. It has been argued that the production of Sanha would have revealed that what was the first information received at the police station whether any accused was named in that Sanha was it an information given by Jai Prakash Yadav or on rumour Sanha entry was recorded at the police station. Non production of Sanha has created doubt that the first information which was given at the police station by a competent person has purposely been concealed and subsequently at the instance of P. W. 2 who is advocate's clerk a false prosecution story has been concocted in which all persons like appellants who are enimical have been named as accused. Since a false prosecution story was concocted as such none of those witnesses who are named in the F. I. R. and who have witnessed the occurrence, were examined by the prosecution.

15. Considering the contradiction in the evidence of witness, nature and quality of evidence brought by the prosecution, the conviction of the appellants could not be maintained. It is a fact that in the F. I. R. P.W. 3, and P. W. 5 are not named as witness, but they have subsequently been introduced during trial as eye witnesses. P. W. 1 is named as a witness in the F. I. R. Dilip son of the deceased is also named as witness in F. I. R. but he has not been examined. Other witnesses who are also named in F. I. R. are Devendra and Ram Bahadur but they also have not been examined. P. W. 6 has stated that in the night of the occurrence itself he examined Devendra Ram Bahadur, Kesho and other persons who are residing near the place of occurrence, none of them have been examined. Besides that material evidence like the oil seeds, bag, bullock cart and bundle of harvest oil seeds were not shown to the I. O. as stated by P. W. 6 in his evidence. The prosecution story is that the occurrence took place when the deceased along with P. W. 7 and his son Dipak were taking the oil seeds bag of Debu Yadav on the bullock cart for selling it to Balia market. Witnesses have also stated in their evidence lying at the place of occurrence itself and subsequently the bags were reached to the shop of Debo Yadav. Debo Yadav was also a

material witness as he could have deposed that actually his oil seeds bags were being carried by the deceased to Balia market on bullock cart for which he had paid and has hired the bullock cart. P. W. 3 and P. W. 5 have stated that they have gone to the field for harvesting and when coming with the bundles of oil seeds they saw the accused persons chasing Gulo Yadav. The bundles carried to the Khalian were thrown there and it remained there till the next day. P. W. 1 and P. W. 5 have stated that bundles were shown to the I. O. but P. W. 6 has stated that no such bundles were shown to him and he did not find any bag of oil seeds at the place of occurrence. These are the circumstances which makes the presence of P. W. 1 P. W. 3 P. W. 5 and P. W. 7 doubtful at the place of occurrence P. W. 1, P. W. 3, P. W. 5, and P. W. 7 are all chance witnesses. They are residents of the adjacent village Pachrukhi and the occurrence had taken place at village Partarpur. Prosecution witnesses are not natural witnesses as they are not residing near the place of occurrence. None of the witnesses from village Partarpur who are natural witnesses have been examined. In case of chance witnesses it is desirable that the reason for their being present at the place of occurrence must be corroborated by the circumstances and the material evidence. In the present case that is totally absent which creates doubt regarding their presence at the place of occurrence.

16. Considering the facts and circumstances of the case I am not convinced that the prosecution has been able to prove its case beyond reasonable doubt. The judgment of conviction needs interference by this Court. Accordingly the Cr. Appeal No. 522 of 1997, Cr. Appeal No. 518 of 1997 and Cr. Appeal No. 476 of 2001 are allowed. All appellants are acquitted of the charges framed against them by the trial Court. Appellant Rampati Yadav of Cr. Appeal No. 522 of 1997 Pinku Yadav and Sekhu of Cr. Appeal No. 476 of 1997 and appellant Garib Das alias upendra Prasad of Cr. Appeal No. 518 of 2001 are on bail, they are directed to be released from the liability of their bail bonds. Dano Yadav of Cr. Appeal No. 518 of 1997 is in jail and he is directed to be released forthwith if not required in any other case.

Manohar Lal Visa, J.

17. I agree.