

Vs.

Vs.

SooperKanoon Citation : sooperkanoon.com/1028517

Court : Patna

Decided On : Aug-23-2013

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Criminal Appeal (DB) No.441
of 1988

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Rajdeo Pandey, son of late Sarvanand Pandey, resident of village- Singhra, Police Station- Konch, District- Gaya. Appellant/s Versus The State of Bihar Respondent/s with Criminal Appeal (DB) No. 445 of 1988

===== 1.

Subhag Singh son of late Ram Narain Singh (since dead) 2. Jai Ram @ Jai Jai Ram Singh, son of Ram Swarup Singh (since dead) 3. Brij Nandan Singh son of Late Ramawatar Singh (since dead) 4. Brijbanshi Singh son of Late Ratan Singh 5. Kail Dusadh son of late Bideshi Dusadh All are resident of village Singhra, P.S. Konch, District- Gaya.

6. Doman Yadav son of Kali Yadav.

7. Binda Singh @ Bindeshwari Singh son of Late Bhageshwar Singh.

8. Jai Narain Singh son of Late Narsing Singh All are resident of village- Budhai, P.S. Goh, District- Aurangabad 9. Rais @ Rahis Singh son of late Hari Singh (since dead) 10. Chandramani Singh son of late Ratan Singh 11. Ayodhya Pandey son of Anuth Pandey 12. Hirday Singh son of Late Ramdeo Singh 13. Narendra Singh son of Late Taluk Raj Singh 14. Parmeshwar Kahar son of Parbhu Ram

(since dead) 15. Ram Parikha Singh son of Pargas Singh (since dead) 16. Nagesh Pandey son of late Ramanand Pandey 17. Harihar Singh son of Late Khargu Singh (since dead) 18. Upendra Singh son of Bindeshwari Singh 19. Nishan Sharma son of late Sawdagar Singh. (since dead) All are resident of village- Singhra, P.S.- Konch, District- Gaya. Appellant/s Versus The State of Bihar Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 2/40 Respondent/s with Criminal Appeal (DB) No. 484 of 1988

===== 1.
Deo Nandan Singh son of late Ram Narain Singh (Since Dead) 2. Mohit Yadav son of Late Chhatri Yadav (Since dead) 3. Dwarik Yadav son of late Padarath Yadav (Since dead) 4. Munsu Yadav son of late Rupan Yadav.

5. Shyamji Pandey son of late Saraju Pandey (Since dead) 6. Munshi Kahar son of late Bhaju Kahar (Since dead) All are residents of village- Singhra, P.S. Haspura, District- Aurangabad. Appellant/s Versus The State of Bihar Respondent/s

===== [Against the judgment of conviction and sentence dated 20.8.1988 passed by Sri Bhagwan Prasad Singh, 1st Additional Sessions Judge, Aurangabad in Sessions Trial No. 69 of 1983/ 102 of 1980 arising out of Goh P.S. Case No. 3(9)/79.]

===== Appearance :
(In CR. APP (DB) No. 441 of 1988) (In CR. APP (DB) No. 445 of 1988) (In CR. APP (DB) No. 484 of 1988) For the Appellant/s : Mr. Krishna Prasad Singh, Sr. Adv. Mr. Manindra Kishore Singh, Adv. Ms. Meena Singh, Mr. Saket Kumar Singh, Adv. Mr. Bhaskar Shankar, Adv. Mr. Rakesh Singh, Adv. For the Respondent/s :
Mr. Ajay Mishra (APP)

===== CORAM: HONOURABLE MR. JUSTICE SHYAM KISHORE SHARMA and HONOURABLE MR. JUSTICE AMARESH KUMAR LAL C. A. V.

JUDGMENT

(Per: HONOURABLE MR. JUSTICE AMARESH KUMAR LAL) Date:

23. 08-2013 All these appeals arise out of judgment of conviction and Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 3/40 sentence dated 20.8.1988 passed by learned 1st Additional Sessions Judge, Aurangabad in Sessions Trial No. 69 of 1983/ 102 of 1980 arising out of Goh P.S. Case No. 3(9)/79, as such they have been heard together and are being disposed of by this common judgment.

2. The prosecution case, in brief, is that on 13.9.1979 at 3 p.m. the villagers of Hasampur constructed a Bandh on Bhagwatipur Canal which goes towards village Singhara, for irrigating the lands of their village. At about 4 p.m. 50/60 persons armed with spear, garasa, pistol etc. came there and asked as to why they had obstructed water of village Singhara and others. They also asked to cut the Bandh, witnesses Chauthi Yadav and others requested them to allow them to irrigate their land for one day only and refused to cut the Bandh. Thereupon, at the instance of accused Rajdeo Pandey (appellant), aforesaid persons began to assault with lathi, bhalas, garasa and country made pistols etc to the villagers of Hasampur. Accused Deonandan Singh assaulted Mahraj Yadav with bhala, Anuth Pandey and Munshi Kahar assaulted with garasa and accused Rajdeo Pandey shot him from his pistol. Accused Dwarika Yadav, Mohit Yadav and Shyamji Pandey assaulted Harikishun Lohar with garasa and Munshi Yadav assaulted him with bhala. Accused Andhi Singh and Anuth Pandey assaulted Krit Dhobi with garasa and Deonandan Singh assaulted him with bhala, as a result of the said assault Mahraj Yadav, Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 4/40 Harikishun Lohar and Krit Dhobi succumbed to their injury on the spot. Accused Bindey Singh @ Bindeshari Singh, Jio Narain Singh, Raish @ Rahish Narain Singh shot fire from their pistols on Deo Prasad Yadav, Kail Prajapati and Bishun Yadav respectively causing them injury. Accused Chandramani Singh shot fire from his pistol on Baleshwar Yadav (P.W.

15) and Ram Ratan Yadav (P.W. 10), whereas, Rajdeo Pandey had fired from his pistol on Doman Yadav and Chandradeo Yadav causing injuries to them. Accused Kail Dusadh, Parmeshwar Kahar and Nishan Sharma also assaulted Baleshwar Yadav (P.W. 15), Madheshwar Yadav and Chauthi Yadav (P.W.11) respectively with lathi. Accused Dwarik Yadav had assaulted Chauthi Yadav (P.W.

11) with garasa, whereas, accused Munshi Yadav assaulted Jhapas Ram (P.W.

20) with bhala and Munshi Kahar assaulted Surith Yadav (P.W.

2) and Lal Babu Yadav (P.W.

7) with garasa. Accused Hirday Singh assaulted Chauthi Yadav (P.W.

11) and Deo Prasad Yadav (not examined) with bhala. Besides, the aforesaid injured persons other witnesses had also seen the occurrence.

3. Further prosecution case is that immediately after the occurrence P.W. 12 Ram Ugraha Yadav along with Chandradeo Mistri (not examined) and others went to the police station where on the basis of his statement Goh P.S. Case No. 3(9)/79 was instituted Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 5/40 against the accused and others on the date of occurrence itself. P.W. 24 Bimal Singh, the then Officer-in-Charge of Goh police station took up the investigation and after investigation the charge-sheet was submitted against the accused. Cognizance was taken. The case was committed to the court of sessions. Charges were framed against the accused to which they denied and claimed to be tried. After the trial the accused were convicted and sentenced: accused 1. Andhi Singh, 2. Deonandan Singh, 3. Anuth Pandey, 4. Mohit Yadav, 5. Dwarika Yadav, 6. Munshi Yadav, 7. Shyamji Pandey and 8. Munshi Kahar were sentenced to undergo rigorous imprisonment for life under Section 302 IPC. Rajdeo Yadav was sentenced to undergo imprisonment for life under Section 302/114 IPC.

1. Binde Singh @ Bindeshari Singh, 2. Jiv Narain Singh, 3. Rais @ Rahis Singh, 4. Chandramani Singh, 5. Ayodhya Pandey, 6. Hirdai Singh, 7. Narendra Singh, 8. Subhag Singh, 9. Jai Ram @ Jai Jai Ram Singh, 10. Brijnandan Singh, 11. Brijbanshi Singh, 12. Kail Dusadh, 13. Doman Yadav, 14. Parmeshar Kahar, 15. Ramparikha Singh, 16. Nagesh Pandey, 17. Harihar Singh, 18. Upendra Singh, 19. Nishan Sharma were sentenced to undergo rigorous imprisonment for life under Section 302/149 IPC. Rajdeo Pandey, Rais @ Rahish Singh and Chandramani Singh were further sentenced to undergo imprisonment for seven years under Section 307 IPC and convicts Munshi Yadav Patna High Court CR.

APP (DB) No.441 of 1988 dt 23-08-2013 6/40 and Munshi Kahar were further sentenced to undergo rigorous imprisonment for one year under Section 324 IPC. Each of convicts 1. Rajdeo Pandey, 2. Jiv Narain Singh, 3. Rais @ Rahish Singh, 4. Chandramani Singh, 5. Ayodhya Pandey and 6. Narendra Singh were further convicted and sentenced to undergo rigorous imprisonment for five years under Section 27 of the Arms Act. No separate sentence was passed under Sections 147 and 148 IPC against the convicts, although they were found guilty under those sections also. All the sentences were directed to run concurrently.

4. All the convicts filed appeals against their conviction and sentence, but during the pendency of the appeals Subhag Singh (appellant no. 1), Jai Ram @ Jai Jai Ram Singh (appellant no. 2), Brijnandan Singh (appellant no. 3), Rais @ Rahis Singh (appellant no. 9), Parmeshwar Kahar (appellant no. 14), Ram Parikha Singh (appellant no. 15), Harihar Singh (appellant no. 17), Nishan Sharma (appellant no.

19) of Cr. Appeal (D.B.) No. 445 of 1988, Deo Nandan Singh (appellant no. 1), Mohit Yadav (appellant no. 2), Munsu Kahar (appellant no.

6) of Cr. Appeal (DB) No. 484 of 1988, Andhi Singh (sole appellant of Cr. Appeal (DB) No. 455 of 1988), Anuth Pandey (sole appellant of Cr. Appeal (DB) No. 522 of 1988) died, as such the appeals against them stood abated vide order dated 14.12.2012 passed in Cr. Appeal (D.B.) No. 441 of 1988 and its analogous appeals. Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 7/40 5. Learned counsel for the appellants has submitted that admittedly the occurrence has taken place due to water dispute. No case under Section 302/149 is made out against the appellants. The appellant Upendra Singh was not present at the time of occurrence as he was a teacher in government high school. There is no evidence that the appellants had gone to the place of occurrence for committing the crime. The prosecution has failed to establish the genesis of the occurrence. The prosecution has not examined all the injured and other material witnesses, as such an adverse inference should be drawn against the prosecution. No one has a right to construct a bandh on main canal and as such the prosecution party was aggressor. At any rate no case is made out under Section 302 IPC.

6. Learned counsel for the State has submitted that learned trial court has considered the evidence on record. It is also admitted fact that the canal does not belong to the appellants. It was a government canal. If the prosecution party had constructed bandh on the canal, they could have faced the consequence and certainly the appellants had no right to assault and kill the deceased. The appellants were certainly the members of mob and they have rightly been convicted and sentenced by the learned trial court.

7. This court is required to reappraise the evidence to consider as to whether the prosecution has been able to substantiate its Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 8/40 charge against the appellants beyond shadow of reasonable doubts.

8. The prosecution has examined following witnesses to prove its charge:- P.W. 1 Prithbi Nath Singh, P.W. 2 Suristh Yadav, P.W. 3 Ram Pukar Yadav, P.W. 4 Moti Lal Yadav, P.W. 5 Raj Deo Yadav, P.W. 6 Indra Deo Mistri, P.W. 7 Lal Babu Yadav, P.W. 8 Bishun Yadav, P.W. 9 Kail Prajapati, P.W. 10, Ram Ratan Yadav, P.W. 11 Chouthi Yadav, P.W. 12 Ram Ugrah Yadav, P.W. 13, Sahdeo Yadav, P.W. 14 Raj Deo Mistri, P.W. 15 Baleshwar Yadav, P.W. 16 Baldeo Yadav, P.W. 17 Dr. Sheo Narayan Prasad, P.W. 18 Ram Kewal Singh, P.W. 19 Girija Yadav, P.W. 20 Jhapas Ram, P.W. 21 Lal Bahadur Rajak, P.W. 22 Deo Deep Singh, P.W. 23 Dr. S. J.

Rahman, P.W. 24 Bimal Singh.

9. Following are the exhibits on behalf of the prosecution:- Ext. 1 - FIR in the pen and signature of Sri Bimal Singh (Investigating Officer- P.W.

24) Ext. 2 to 2/12 - 13 Injury reports in the pen and signature of P.W. 17 Dr. S. N. Prasad Ext. 3 to 3/2 Signature of two witnesses on the fard beyan Ext. 4 to 4/2 Three Inquest report Ext. 5 to 5/2 Post Mortem report with regard to the deceased Ramkrit Dohi, Hari Kishun Lohar and Mahraj Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 9/40 Yadav.

10. Following are the exhibits on behalf of defence- appellants Ext. A The signature of Upendra Narayan on the attendance register Ext. A/1. The signature of Mohan Singh in the attendance register Ext. A/2 The signature of Sub-divisional Officer Gulab Rai in the attendance register.

11. Out of 24 witnesses examined on behalf of prosecution, P.W. 5, P.W. 9, P.W. 13 and P.W. 15 have been tendered. P.W. 18 is hostile. P.W. 22 is attesting witness who has proved the signatures on the fard beyan and the inquest report which have been marked as Ext. 3 and 4 series.

12. P.W. 12 is the informant and son of the deceased Mahraj Yadav (deceased). P.W. 7 is also the son of Mahraj Yadav. P.W. 6 and P.W. 14 are the sons of deceased Hari Kishun Lohar. P.W. 21 is the son of the deceased Ramkrit Dhobi. P.W. 6, P.W. 7, P.W. 12, P.W. 14 and P.W. 21 are eye witnesses to the occurrence. P.W. 2, P.W. 7, P.W. 8, P.W. 9, P.W. 10, P.W. 11, P.W. 13, P.W. 15 and P.W. 20 are the injured eye witnesses to the occurrence.

13. First of all, let us examine the evidence of P.W. 12, Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 10/40 who is the informant of this case and son of the deceased Mahraj Yadav. He has stated that on the date of occurrence at 4 p.m. he was in his field and he saw a mob and came to the Bandh which was constructed to stop the flow of water and to irrigate the field in the village Hasampur. He saw that 50/60 persons armed with various weapons such as pistol, garasa, bhala and lathi were coming from village Singhra. They asked the villagers of Hasampur to remove the bandh for which villagers of Hasampur were not ready. He identified Rajdeo Pandey, Anuth Pandey (died), Deo Nandan Singh (died), Munshi Kahar (died), Mohit Yadav (died), Dwarika Yadav (died), Munshi Yadav (appellant), Andhi Singh (died), Shyamji Pandey (died), Nishan Sharma (died), Upendra Singh (appellant), Ayodhya Pandey (appellant), Subhag Singh (died), Kail Dusadh (appellant), Parmeshwar Kahar (died), Hari Singh (died), Prem Singh (died), Chandrashekhhar Singh (died), Rabindra Singh (died), Doman Yadav (appellant), Ram Pariksha Singh (died), Jai Jai Ram Singh (died), Anirudh Singh (died), Raish Singh (died), Brijnandan Singh (died), Jai Narayan Singh (appellant), Binde Singh (appellant), Hriday Singh (appellant), Nagesh Pandey (appellant),

Chandra Mani Singh (appellant), Brij Banshi Singh (appellant) and Pheku Dusadh (appellant). He has claimed to have identified in the court also. Out of them only Rajdeo Pandey, Upendra Singh and Andhi Singh were Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 11/40 present in the court at the time of his deposition. He has further stated that Deonandan Singh with spear, Anuth Pandey and Munshi Kahar with Garasa and Rajdeo Pandey with pistol assaulted his father Mahraj Yadav. He has further stated that Rajdeo Pandey had instigated the co-accused to kill. Due to assault his father Mahraj Yadav died on the spot. Harikishun Mistri was assaulted by Dwarika Yadav and Mohit Yadav with garasa, and Munshi Yadav with spear which caused his instant death on the place of occurrence. Krit Rajak was assaulted by Andhi Singh, Shyamji Pandey and Anuth Pandey with garasa and Deo Nandan Singh with spear. Krit Rajak also died on the place of occurrence. Lalu Yadav (P.W. 7), Chandradeo Yadav (not examined), Chauthi Yadav (P.W. 11), Jhapas Ram (P.W. 20), Kishun Prajapati (P.W. 9), Bishun Yadav (P.W. 8), Ram Ratan Yadav (P.W. 10), Sahdeo Yadav (P.W. 13), Doman Yadav (not examined), Baleshwar Yadav (P.W. 15), Deo Prasad Yadav (not examined) were assaulted with lathi spear, garasa and pistol. Lal Babu Yadav (P.W. 7), Chauthi Yadav (P.W. 11), Chandradeo Yadav (not examined) were in serious injured condition. The occurrence was witnessed by Deo Das Singh, Chandradeo Mistri, Moti Yadav, Rajdeo Yadav, Anuj Yadav, Ram Kewal Singh (P.W.

18) and others. He has further stated that Sri Yogendra Overseer told him to construct bandh in the canal and to irrigate the field. The accused had no dispute prior to the Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 12/40 occurrence. After the occurrence he went to the Goh police station and his statement was recorded by the Officer-in-charge which was witnessed by Chandradeo Mistri and Deodeep Singh (both of them not examined). He returned to the place of occurrence with the Officer-in-Charge of the police station. The officer-in-charge seized blood stained soil and visited the dead body. The injured had gone to the hospital. The dead body was sent to the police station. In his cross- examination, he has stated that he does not know as to whether Binde Singh is known as Bindeshwari Singh. He is resident of village Budhai. He has denied the suggestion that Binde Singh was hospitalized in Mental Hospital

Ranchi three days prior to the occurrence. He has seen the injury on the dead body of all the three deceased. He has been cross-examined at great length. It appears that accused-defence has failed to demolish his evidence.

14. P.W. 1 is a formal witness who has proved the writing and signature of the officer-in-charge (P.W.

24) of the FIR.

15. P.W. 2 has also supported the prosecution case. He has stated that at the time of occurrence he was near Bhagwati canal on which a bandh was constructed for irrigating paddy crop. The land of Hasampura village was being irrigated by canal water. 70/80 persons of village Budhai, Harigaon, Singhra, Mathiya came to the canal armed with various weapons. They started to cut bandh which was Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 13/40 objected by the villagers of Hasampur. Rajdeo Pandey instigated the members of mob to kill. Rajdeo Pandey shot fire which caused injury to him. Munshi Kahar assaulted him with Garasa which caused injury in his hand. Hari Kishun Mistri was assaulted by Mohit Yadav, Dwarika Yadav and Munshi Kahar with garasa which caused his death. In this occurrence Mahraj Yadav and Krit Dhobi were also killed. He has identified the aforesaid accused in the court. He has also claimed to identify those accused who were not present in the court. He has further stated that besides him Chandra Deo (P.W. 6- it appears that Chandeo was wrongly mentioned as Indradeo in the heading of his deposition), Lal Babu (P.W. 7), Sahdeo (P.W. 13), Ram Ratan (P.W. 10), Bishun (P.W. 8), Doman (not examined) and Chauthi Yadav (P.W.

11) were also assaulted and caused injury. He has further stated that he and others went to the hospital for treatment. After returning from the hospital his statement was taken by the police. In paragraph 7 he has stated that field of village Hasampur was irrigated after making Bandh on the canal for the last three years. The villagers of Hasampur used to construct Bandh by bags and the accused did not object. In paragraph 10 he has stated that in his presence the police has not arrived at the place of occurrence. He has also been cross-examined at length. There is no material contradiction in his deposition. His

evidence appears to be convincing. Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 14/40 16. P.W. 3 has also supported the prosecution case as P.W.

2. He has also been cross-examined at great length.

17. P.W. 4 has also supported the prosecution case as P.W. 2 and P.W.

3. He has also been cross-examined at length. There is no material contradiction in his evidence.

18. The name of P. W. 6 has been wrongly written in title cause as Indradeo Mistri son of Harikishun Mistri (deceased). After deposition he has put his signature as Chandradeo Mistri and in his deposition he has stated that in the occurrence Mahraj Yadav, Krit Rajak and his father Hari Kishun were killed. It appears that it is a slip of pen and it should have been mentioned as Chandra Deo in place of Indradeo. He has also supported the prosecution case as P.W.

2. In his cross-examination in paragraph 4 he has stated that he had not gone to construct the bandh but his elder brother Rajdeo Mistri (P.W.

14) and his father Hari Kishun Mistri (deceased) had gone to construct Bandh. His evidence also appears to be natural and convincing.

19. P.W. 7 is the son of the deceased Mahraj Yadav and also the victim of the occurrence as he has also received injury caused due to assault made by Kailu Dusadh with garasa, Munshi Kahar and Subhag with spear.

20. P. W. 8 is the brother of the deceased Mahraj Yadav and is also the victim of occurrence as he was assaulted and got Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 15/40 injury. He has also supported the prosecution case. He has stated that he made a request to Rajdeo Pandey and Andhi Singh not to quarrel but he instigated the members of mob to kill and he will manage the criminal case. He has stated that Rais Singh shot fire at the instance of Andhi which caused pellet injury on several parts of his body. He has named Veer Bansi Singh, Chandraman Singh, Rais Singh, Ram Pariksha Singh, Parmeshwar Kahar,

Harihar Singh. Andhi Singh and Rais Singh instigated the members of mob. He has further stated that in the occurrence Lal Babu (P.W. 7), Maheshwar Yadav (not examined). Chandradeo (mentioned as Indradeo P.W. 6), Sahdeo (P.W.

13) and Surith Yadav (P.W. 20, Jhapas Kahar (P.W. 20), Chauthi Yadav (P.W.

11) and others caused injury. Krit Dhobi, Hari Kishun Mistri and Mahraj Singh were killed by the members of the mob. He has identified the accused Andhi Singh and Rajdeo Pandey in the court and claimed to identify others who were not present in the court. He has stated that he does not remember as to whether Upendra Singh (accused) was a witness against him in a criminal case lodged against him by Dhaneshar Mukhiya of village Singhra.

21. P.W. 10 is also a victim of the occurrence. He has stated that a member of about 100 persons came at the canal near the Bandh constructed by the villagers of Hasampur over the Bhagwati canal. They were requested to wait for two days but they did not agree Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 16/40 and cut the Bandh and assaulted his co-villagers. He identified Rajdeo Pandey, Deo Nandan Singh, Munshi Kahar, Andhi Singh, Kail Gosai, Rais Singh, Brij Bansi Singh, Chandraman Singh, Jai Jai Ram Singh, Brijnandan Singh and Harihar Singh. He has also stated that Chandraman Singh shot fire at him causing injury on his leg and back. He has also stated that Mahraj Yadav, Krit Baitha and Harikishun Mistri were killed in the occurrence. Rajdeo Pandey shot fire at Mahraj Yadav. Deoki Nandan Singh with bhala and Munshi Kahar with garasa assaulted Mahraj Yadav. Andhi Singh with garasa and Deo Nandan Singh with spear killed Krit Baitha. Chauthi Yadav (P.W. 11), Sahdeo Yadav (P.W. 13), Chandra Deo Yadav (not examined), Doman Yadav (not examined), Bishun Yadav (P.W.

8) and others were injured. He cannot say as to who had assaulted them. In paragraph 3 he has stated that he was in Goh hospital. He has further stated that the villagers of Hasampur always used to construct Bandh on the canal and irrigate their fields. He has identified accused Rajdeo Pandey in the court and has claimed to identify the aforesaid accused who were represented by their advocates. He has also been cross-examined. The defence has also failed to demolish his evidence.

22. P.W. 11 has stated that on the date and time of occurrence he was present at the canal. 60/70 persons armed with various weapons came there from northern direction. Rajdeo Pandey Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 17/40 asked to cut Bandh. P.W. 11 told him that water flown towards his field for the last six days and requested him to allow to irrigate his field for one day. Munshi Kahar, Rajdeo Pandey and others removed the bandh. Munshi Kahar assaulted him with garasa. He received injury by two blows of garasa. He fell down and he could not know as to who had assaulted him further. Even after his felling down he was assaulted with bhala. He could not see as to who had assaulted him with bhala. Harikishun Mistri, Mahraj Yadav and Krit Dhobi died on the spot due to assault. He identified Rajdeo Pandey, Brij Banshi Babu, Muni Kahar and Chandraman Babu. He has claimed to identify the aforesaid accused. He has stated that the police took his statement after 36 days as he had been sent to Gaya hospital on the next day of the occurrence. In his cross-examination he has stated that he remained in Gaya hospital for 15 days, thereafter he returned to his house.

23. P.W. 14 is the son of deceased Harikishun Lohar. He has stated that a mob consisting of about 100 persons armed with various weapons came to the place of occurrence from the direction of village Sighra. They started cutting the bandh which was protested by his villagers but they did not stop. Rajdeo Pandey instigated the members of mob to assault, thereafter Mohit Yadav and Dwarika Yadav assaulted his father with Garasa, Munshi Yadav with spear and Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 18/40 Shyamji Pandey with garasa and Nishan Singh with lathi. His father succumbed to the injuries. Krit Rajak and Mahraj Yadav also died due to assault. Bishun Yadav (P.W.

8) and Chandradeo Yadav, Jhapas Ram (P.W. 20), Ram Ratan Yadav (P.W. 10), Kishun Prajapati (P.W. 9), Chauthi Yadav (P.W.

11) and others were also assaulted. He has identified Munshi Yadav and Rajdeo Pandey and others in the court. He has also been cross-examined at length. It appears that there is no material contradiction in his statement. His evidence appears to be convincing.

24. P.W. 16 is the brother of Ram Ratan Yadav (P.W. 10). He has also supported the occurrence and stated that the members of mob were armed with various weapons. Rajdeo Pandey and Andhi Singh instigated the members of mob to assault. His co-villagers requested not to cut the bandh but they cut the bandh. He has stated that he identified Andhi Singh, Rajdeo Pandey, Mohit Yadav, Anuth Yadav, Dwarika Yadav and Doman Yadav. He has also stated that Mahraj Yadav, Krit Dhobi and Hari Kishun were killed by the members of mob. Anuth Pandey with pistol, Deonandan Singh with spear, Mohit Yadav with spear and Dwarika Yadav with garasa killed Mahraj Yadav. He cannot say as to who had killed Krit Dhobi and Hari Kishun Mistri. Kishun Yadav, Ram Ratan Yadav (P.W. 10), Suristh Yadav (P.W. 2), Chandradeo Yadav, Jhapas Kahar (P.W. 22), Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 19/40 Kail Kumhar (P.W.

9) and others got injury. In his cross-examination he has stated that he has identified the above noted persons prior to the occurrence.

25. P.W. 17 Dr. Shiv Narayan Prasad has examined the injured on 13.9.1979 while he was posted as Civil Assistant Surgeon in the hospital at Goh and examined the injured as follows:- He examined Chandradeo Yadav, son of Bishun Yadav at 7.50 pm. and found the following injuries:- (i) one injury on the right side of chest 1 in diameter entering into the lung caused by fire arm. (ii) One injury on the right side of chest 1 in diameter caused by firearm. Injury No. 1 was grievous and injury no. 2 was simple in nature. The age of injury was within six hours. This injury report is marked as Ext.

2. He examined Bishun Yadav (P.W. 8), son of Sukan Yadav at 8.50 pm. and found the following injuries:- (i) Nine injuries on back (ii) One injury on left ear (iii) Four injuries on right arm (iv) One injury on right forearm (v) Two injuries on left buttock Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 20/40 All the above injuries were 1/8 in diameter and had been caused by firearm and were simple in nature. (vi) One swelling on the back and right leg (vii) One swelling on back of left leg. Injury Nos. vi and vii had been caused by hard blunt substance and were simple in nature. The age of injuries were within six hours. This injury report has been marked as Ext. 2/1. He examined Ram Ratan Yadav (P.W. 10),

son of Raju Yadav at 8.45 p.m. and found the following injuries:- (i) Seven injuries on back (ii) five injuries on right buttock and thigh (iii) Two injuries on back of left buttock. (iv) Five injuries on left leg. (v) one lacerated injury on right forearm x x skin deep caused by hard blunt weapon. Injury Nos. i, ii, iii, and iv were 1/8 in diameter and circular caused by firearm. All the injuries were simple in nature. This injury report is marked as Ext. 2/2. He examined Kail Prajapati (P.W.

9) son of Baudh Prajapati at 8.22 pm. and found the following injuries:- (i) Ten injuries on left leg each 1/8 in diameter caused by Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 21/40 firearm. The injury was simple in nature. The age of the injury was within six hours. This injury report has been marked as Ext. 2/3. He examined Lal Babu Yadav (P.W. 7), son of Mahraj Yadav at 8.20 P.M. and found the following injuries:- (i) One incised injury on back of right shoulder and on back 12x5x4 caused by sharp cutting weapon. The injury was simple in nature. This injury was caused by garasa. The age of injury was within six hours. This injury report is marked as Ext. 2/4. He examined Sahdeo Yadav (P.W. 13), son of Bishun Yadav at 8.10 P.M. and found the following injuries:- (i) Three sharp cutting injuries on right side of chest each 1/3 x 1/3x1/8 caused by sharp cutting weapon such as Bhala. The nature of injury was simple. The age of injury was within six hours. This injury report has been marked as Ext. 2/5. He examined Suristh Yadav (P.W. 2), son of Bairagi Yadav at 7.50 P.m. and found the following injuries:- (i) Three injuries on left forearm each in diameter caused Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 22/40 by firearm. (ii) One incised injury on left forearm 1x2/3x1/8 caused by sharp cutting weapon. (iii) One injury on lower lip 1/8 in diameter caused by fire arm. All the injuries were simple in nature. He examined Baleshwar Yadav (P.W.

15) son of Khub Lal Yadav at 8.55 p.m. and found the following injuries:- (i) one injury on left thigh 1/8 in diameter caused by fire arm. (ii) One lacerated injury on back of right leg 1/8 x 1/8 x 1/8 caused by hard and blunt substance such as lahti. (iii) One swelling on back of left wrist 3 x 2 caused by hard and blunt weapon. (iv) One lacerated injury on left arm x x caused by hard and blunt weapon. All the injuries were simple in nature. The age of injuries was within six hours. This injury report has been marked as Ext. 2/7. He examined Deo Prasad Yadav, son of

Raghu Pat Yadav at 8.58 p.m. and found the following injuries:- (i) One injury on left thigh on back $1/8$ in diameter caused Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 23/40 by firearm. (ii) One incised injury on right cheek $1 \times 1/8 \times 1/8$ caused by sharp cutting weapon such as Bhala. Both the injuries were simple in nature. The age of injury was within six hours. This injury report has been marked as Ext. 2/8. He examined Madheshwar Yadav son of Raksha Yadav on 14.9.1979 at 1.10 pm. and found the following injuries:- (i) One incised injury $2 \times 1/3 \times$ on head caused by sharp cutting weapon such as bhala. (ii) One swelling 3×2 on right arm caused by hard and blunt weapon. Both the injuries were simple in nature. The age of injuries was within six hours. The injury report has been marked as Ext. 2/9. He examined Doman Yadav son of Judagir Yadav on 14.9.1979 at 1.20 pm. and found the following injuries:- (i) One injury $1/8$ in diameter on back of left fore finger caused by firearm. Simple in nature and within six hours in the age. This injury report has been marked as Ext. 2/10. He examined Jhapas Ram (P.W.

20) son of Shri Ram on 14.9.1979 at 1 pm and found the following injuries:- Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 24/40 (i) One incised injury on chest on lower part $1 \times 1/3 \times$ caused by sharp cutting weapon. (ii) One lacerated injury $2/3 \times 1/8 \times 1/8$ on left fore finger caused by hard and blunt substance. Both the injuries were simple in nature. The age of injuries was within 12 hours. The injury report is marked as Ext. 2/11. Injury No. 1 was possible by Bhala. He examined Chauthi Yadav (P.W.

11) son of Sheo Balak Yadav on 13.9.1979 at 11 p.m. and found the following injuries on his person:- (i) One incised injury on lower part of back $1 \times 1/8 \times$ (ii) One incised injury on back of left arm $1 \times 1/3 \times$ (iii) One swelling on left side of back 4×4 (iv) One incised injury on back $1 \times 1/8 \times 1/8$ (v) One incised injury on back $2 \times 1/8 \times 1/8$ (vi) One incised injury on head $6 \times 1/8 \times 1/3$ (vii) One incised injury on head $3 \times 1/8 \times 1/8$ (viii) One lacerated injury on nose $1 \times$ Injury Nos. i, ii, iv, v, vi and vii had been caused by sharp cutting weapon and the rest had been caused by hard blunt substance. All the injuries were simple in nature and the age of all these injuries were within six hours. The injury report Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 25/40 has been marked as Ext. 2/12.

26. P.W. 18 has been declared hostile by the prosecution but he has stated during examination-in-chief that after constructing Bandh on the canal his co-villagers were taking water in their field. In the meantime, 60/70 persons from northern side came there and they started cutting Bandh. His co-villagers requested him to allow the water to go into their field but the members of mob started assaulting his co-villagers. He identified Brij Bansi Singh, Chandraman Singh and Rajdeo Pandey. His co-villagers Krit Dhobi, Mahraj Yadav and Harikishun Lohar were killed by the members of mob. Some of his co-villagers were also injured. Since he could not know as to who had assaulted whom, he has been declared hostile.

27. P.W. 19 has stated that at the time of occurrence he was grazing his she-buffalo near the canal. He saw that a mob armed with various weapons were coming from the direction of Singhra village. They wanted to cut the bandh which was protested by his co-villagers, but they did not stop. After altercation they cut Bandh and assaulted his co-villagers. He identified Rajdeo Pandey, Kail Dusadh, Munsu Kahar, Dwarika Yadav, Jai Jai Ram Singh, Subhag Singh, Deo Nandan Singh and Anuth Pandey. He has further stated that Rajdeo was armed with pistol, Deonandan Singh, Munsu Kahar, Kail Dusadh and Jai Jai Ram were armed with garasa. Subhag Singh was armed Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 26/40 with bhala and Narendra Singh was armed with pistol. The accused killed Mahraj Yadav, Hari Kishun Lohar and Krit Rajak. Anuth Singh assaulted Krit Rajak with garasa. Mahraj Yadav was assaulted by Deonandan Singh, Munshi Khar, Rajdeo Pandey and Subhag Singh. His co-villagers Ram Ratan Yadav (P.W. 10), Bishun Yadav (P.W. 8), Chandra Deo Yadav (not examined). Suristh Yadav (P.W. 2), Sahdeo Yadav (P.W. 13), Deo Raj Yadav, Kail Prajapati (P.W. 9), Chauthi Mahato (P.W. 11), Jhapas Ram (P.W.

20) and others got injury. In his cross-examination in paragraph 6 he has stated that the police has taken his statement on Thursday at 8 pm. on the canal. He has been cross-examined at length to show the construction between the statement made in the court and before the investigating officer.

28. P.W. 20 is also the victim of the occurrence. He has stated that he was putting soil on the ridge of his field near the bandh over Bhagwatipur canal. 50/60 persons

armed with weapons came from the northern direction. He identified Munshi Yadav, Kail Dusadh, Anuth Pandey. Out of them Munshi Yadav assaulted with spear on his chest. Kail Dusadh caused injury in his fingers of the left hand. The members of the mob assaulted his co-villagers which resulted into the death of Mahraj Yadav, Dwarika Mistri and Krit Rajak. In his cross-examination, he has stated that he identified Rajdeo Pandey and others of Singhra village prior to the occurrence. Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 27/40 In his cross-examination he has also supported the occurrence.

29. P.W. 21 is the son of Ramkrit Dhobi who died due to assault in this occurrence. He has stated that he was working in his field. He saw a mob coming towards the canal where the bandh was constructed by the co-villagers. The co-villagers asked them to allow them to irrigate their field for that day and tomorrow they would take water for irrigation but the members of mob did not abide by their request and they cut the bandh and assaulted. He identified Andhi Singh, Deo Nandan Singh, Anuth Pandey, Rajdeo Pandey, Nagendra Singh, Nishan Singh and Shyamji Pandey as member of the mob. He has further stated that Andhi Singh, Deonandan and Anuth Pandey assaulted his father Ramkrit Rajak with bhala and garasa respectively and after receiving the injury his father fell down and died on the spot. He has also stated that Nagendra Singh, Ramji Pandey and Nishan Singh assaulted Chandradeo Yadav and Suristh Yadav. Nagendra Singh was armed with pistol and Nishan Singh and Shyamji Pandey were armed with lathi. Chauthi Yadav, Doman Yadav and Bishun Yadav and many others were assaulted. He has also been cross-examined in his cross-examination. He has also supported the prosecution case and the accused have failed to demolish his evidence.

30. P.W. 23 has held the post-mortem examination on Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 28/40 15.9.1979 while he was posted as Civil Assistant Surgeon in the Sadar Hospital, Aurangabad at 9 a.m. on the dead body of Ramkrit Rajak and found following ante-mortem injuries on his dead body who was identified by constables Abdul Haque and Deo Narayan Singh. (i) Right forearm was fracture with lacerated wound in the middle, of irregular size. (ii) On the upper part just above the middle of the left forearm sharp cut wound 2x x

cutting the bone leading to fracture. (iii) Both sides of anterior chest walls, lacerated wounds in the middle of irregular size was present. On opening the chest cavity on the right sides 5th, 6th and 7th ribs were fractured and penetrated lungs tissue and pleura. The chest cavity was full of blood and serous fluids. (iv) On the left clavicular fossa sharp cuts wound 2 x x 1x 1 cutting the clavicle. (v) One sharp cut wound on the dorsum of the right palm placed transversely 2 x x cutting the bone of the palm. (vi) One sharp cut wound on the forehead on the left side 2 x x bone deep with fracture of the left frontal bone. (vii) On both right and left thigh on the upper lateral part lacerated wound was there. Right thigh injury was 3 x x muscles Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 29/40 deep and the left thigh injury was 2 x x skin deep. Injury nos. (ii), (iv) and (vi) were caused by sharp cutting substance and the rest were caused by hard and blunt substance. Injury Nos. iii and vi were sufficient to cause death. Time elapsed since death was about 36 to 48 hours. The postmortem report was marked as Ext.

5. On the same day at 8.30 a.m. P.W. 23 held postmortem examination on the dead body of Harikishun Mistri identified by the aforesaid constables and Rajdeo Mistri (P.W.

14) and found the following ante-mortem injuries:- (i) One sharp penetrating wound on the right side of upper chest wall 1 x x penetrating the chest wall deeply. (ii) On the left side of chest wall in the middle one lacerated wound 2 x 1 x bone deep. (iii) Left wrist joint was fractured. (iv) On the left side of the upper abdomen. One sharp cut wound 3 x x skin and muscle deep cutting the large intestine and foecal matter was present in the whole abdominal cavity. (v) One lacerated wound on the right lateral side of the middle of the leg 1 x x skin deep. (vi) One lacerated wound 2 x x skin deep on the forehead in the middle. Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 30/40 (vii) One external examination of the chest cavity, the right lung was torn out due to injuries no. (i) on the left side of the chest wall 6th, 7th, and 8th ribs were fractured and penetrated the lungs tissue. The whole chest cavity was full of blood and serous fluids and so was the abdominal cavity. Injury Nos. (i) and (iv) were caused by sharp cutting penetrating substance and the rest injuries were caused by hard and blunt substance. The cause of death was injury nos. (i) and (iv) leading to haemorrhage and shock. The

time elapsed since death was about 36 to 48 hours. The post report has been marked as Ext. 5/1. On the same day at 9.30 a.m. P.W. 23 held the postmortem examination on the dead body of Mahraj Yadav identified by aforesaid constables and Ram Ugrah Yadav (P.W.

12) and found following ante-mortem injuries on the dead body:- (i) One lacerated wound on the middle of the left upper arm laterally 2 x x skin deep and the left humerus was fractured. (ii) One transverse sharp cut wound on the back just below the neck 6 x skin muscle and bone deep. (iii) Another sharp cut transverse wound on the middle of the back 7 x 1 x skin and muscle deep reaching up to vertebral column. (iv) One lacerated wound on the anterior aspect of the Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 31/40 chest on the right side in the middle 2 x x skin muscle and bone deep. One cutting the chest wall 4th and 5th ribs of right side were fractured and piercing the pleura and lung tissues with the result the chest cavity wall was full of blood and serous fluids. (v) One lacerated wound on the back of the left occipital bone 3 x x bone deep. On opening cranial cavity the occipital bone was fractured and the cavity was full of blood and haematoma. Injury Nos. (ii) and (iii) were caused by sharp cutting substance and the rest by hard and blunt substance. Injury Nos. (iv) and (v) were sufficient to cause death. Time elapsed since death was about 36 to 48 hours. The post-mortem report has been marked as Ext. 5/2. He has further stated that injury no. (vi) of Ramkrit Rajak may be caused by garasa. Sharp cutting injuries may be caused by any sharp cutting substance. Injury Nos. (i) and (iv) of Harikishun Mistri may be caused by bhala. He has also been cross-examined at length and has stated that the deceased Mahraj Yadav was aged about 50 years. Ramkrit Rajak was aged about 70 years and Hari Kishun Mistri was aged about 65 years.

31. P.W. 24 is the Investigating Officer. He has stated that on 13.9.1979 he was the officer-in-charge of Goh Police Station. The informant Ram Ugrah Yadav (P.W.

12) came to the police Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 32/40 Station. He recorded his statement which is in his writing and signature (Ext.

1) which was witnessed by Chandradeo Mistri and Deo Charan Singh. He took the charge of investigation and went to the place of occurrence. The place of occurrence is about 500 yards east of village Haspura near Bhagwatipur canal. The canal is lying there from South to North. On the western side of the canal there was the dead body of Harikishun Mistri, Ramkrit Rajak and Mahraj Yadav. He also found blood and mark of laceration. There was sign of construction of Bandh. The width of the canal at that place was 21 feet and the plank of the canal was 14 feet on the eastern side and 21 feet on the western plank. He prepared the inquest report of all the three dead body in carbon process which was witnessed by Chandradeo Mistri and Deo Charan Singh. The inquest reports have been marked as Ext. 4, 4/1 and 4/2. The blood stained soil was seized and seizure list was prepared. On the north side of the place of occurrence towards the village Singhra trampling mark in the paddy field and on the bank of canal were found by the Investigating Officer. The village Singhra is one mile in the northern side of the place of occurrence and the land of village Singhra is at a distance of 200 yards from the place of occurrence. Gaya-Goh pitch road is at a distance of 7 kilometres in the southern side. There was sub-canal near the place of occurrence through which the villagers of Haspura Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 33/40 were irrigating their field. He has taken the written statement of the informant and the witnesses Chandradeo Mistri (not examined), Deodeep Singh, Rampukar Yadav (P.W. 3), Baldeo Yadav (P.W. 16), Moti Yadav (P.W. 4), Ram Kewal Singh (P.W. 18), Ram Pasand Yadav, Lal Bahadur Rajak (P.W. 21), Rajdeo Mistri (P.W. 14), Rajdeo Yadav (P.W.5). He deputed constable Abdul Haque and chaukidar. On 14.9.1979 he arrested the accused Andhi Singh and went to the hospital at 10.30 a.m. and took the statement of the injured. Lal Babu Yadav (P.W. 7), Bishun Yadav (P.W. 8), Ram Ratan Yadav (P.W. 10), Deo Prasad Yadav (Not examined), Kail Prajapati (P.W.

9) and others. On 18.9.1979 he received postmortem reports. After investigation he submitted charge sheet against the accused. In his cross-examination he has stated that in recording the fard beyan he took half an hour. The place of occurrence is 10 kilometres away from the Goh police station. The Bhagatipur canal is at a distance of three kilometres from pitch road. He has also been cross-examined at length.

32. The defence has also examined the following witnesses:- D. W. 1 Mohan Singh, D.W. 2, Ramadhar Choubey, D.W. 3 Din Dayal Singh, D. W. 4 Bali Ram Singh, D. W. 5 Mohan Pathak.

33. D. W. 1 is an assistant teacher in Janta High School Harigaon. In the year 1974 accused Upendra Narain Singh was also Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 34/40 an assistant teacher of that school. There is an attendance register of the teachers. Upendra Narain Singh was present in the school on 13.9.1979 from 10 a.m. to 4 pm. The attendance register has also been signed by Sub-divisional Education Officer, Gulab Chand Ram. He has identified the signature of Upendra Narain Singh as Ext. A and the signature of Gulab Chandra Ram, Sub divisional Education Officer as Ext. A/2. In his cross-examination he has stated that during the year 1979-80 there was nine teachers in that school. He has stated that the teacher who does not come to school after 10 a.m. a mark is put against his name. The teachers leave the school at 4 pm.

34. D. W. 2 is dafadar and he has proved snaha in Goh police station which has been marked as Ext. B series.

35. D. W. 3 is Sub divisional Officer, Sonal Canal Division. He has stated that Bhagwatipur tributary came out from Sone dam and has proved the investigation report approved by the irrigation department Ext. C. In his cross-examination he has stated that he was not posted there in 1974 and no one signed on the investigation report in his presence. He does not know as to who had typed the report.

36. D. W. 4 was Ex-mukhiya of Tukurakhi Gram Panchayat. He has described about the tributary from Bhagwatipur canal. Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 35/40 37. D. W. 5 is the constable who has proved the station diary entry No. 216 dated 13.9.1979 which has been marked Ext. B/4.

38. Considering the ocular as well as documentary evidence adduced on behalf of both the parties, it appears that P.Ws. 2, 3, 4, 6, 7, 8, 10, 11, 12, 14, 16, 18, 19 and 21 have deposed against Rajdeo Pandey. They have supported the prosecution case and the overtact committed by him. P. Ws. 8, 10, 11, 12 and 18

have stated that Brijbanshi Singh was also the member of mob and he has committed the overtact. Against Kail Dusadh there is evidence of P.Ws. 12, 19 and 20. Against Doman Yadav P.Ws. 3, 12, and 16 have deposed against him. P.W. 3 has stated that he was armed with Gandasa. P.Ws. 3, 6 and 12 have deposed against appellant Jai Narain Singh. P.W. 3 has stated that he was armed with firearm. Against Chandramani Singh there is evidence of P.Ws. 10, 11, 12 and 18. P.W. 10 has stated that Chandramani Singh was armed with pistol and has caused injury in his leg and back. It appears that injuries have been corroborated by medical evidence of P.W. 17 who has also found injuries on back, buttock, thigh, left leg of P.W. 10 caused by firearm. Ayodhya Pandey has been named by P.Ws. 6, 7 and 12. P.W. 6 has stated about assault made by Ayodhya Pandey causing injuries to several persons who are witnesses in this case. P.W. 7 has specifically stated that Ayodhya Pandey was one of the accused who Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 36/40 killed his father Mahraj Yadav. P.W. 12 has also named him as active member of the mob which caused the death of three persons and injuries to several others including the witnesses. P.Ws. 2 and 12 have identified Hirday Singh as one of members who has caused the murder of Mahraj Yadav, Krit Dhobi and Hari Kishun Lohar and caused injuries to several others including P.Ws. 2, 6, 7, 8, 10, 11 and 13. P.W. 12 has also stated that resident of village Singhra cut the bandh and assaulted the co-villagers of Hasampur and caused the death of three persons including his father with lethal weapons. Out of them he also identified Hirday Singh as one of them. Narendra Singh has also been named by P.Ws. 19 and 21 as one of the members of mob armed with pistol. P.W. 21 in paragraph 2 has stated that Narendra Singh caused injury to Chandradeo Yadav and Suristh Yadav (P.W. 2). Appellant Nagesh Pandey and Upendra Singh have also been identified as members of mob by P.Ws. 4 and 12. Both of them were armed with lathi. But the evidence of D. W. 1 shows that the appellant Upendra Singh was a teacher in Janta Uchcha Vidyalay, Harigaon and was present in the school on 13.9.1979 and has proved the signature of Upendra Singh as Ext. A. The attendance register has been attested by the Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 37/40 Sub Divisional Education Officer (Ext. A/2). The prosecution has not challenged the authenticity of the Attendance Register or the signature of the appellant Upendra.

No allegation of any overtact has been made by any prosecution witness. The appellant Upendra is entitled to get the benefit of doubt. He is acquitted of the charge. The judgment of his conviction and sentence is set aside by giving him the benefit of doubt.

39. So far appellant Binda Singh @ Bindeshwari Singh (appellant of Cri. Appeal (D.B.) No. 445 of 1988) is concerned, he has been named only in the first information report by the informant (P.W. 12). No specific overtact has been made against him. The evidence of P.W. 12 has not been corroborated by any other prosecution witness. Since the evidence of P.W. 12 so far this appellant is concerned, remains uncorroborated and there is no specific overtact against him, he is entitled to get the benefit of doubt. He is acquitted by giving him the benefit of doubt. The conviction and sentence so far this appellant is concerned is set aside. His appeal is allowed. He is also discharged from the liability of his bail bonds.

40. Appellant Munsu Yadav have been identified by P.Ws. 4, 6, 12, 14 and 20. P.Ws. 4 has specifically stated that Munsu Yadav was armed with gandas. P.W. 6 has stated that Munsu Yadav was one of the members of mob who caused the death of three persons and the Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 38/40 injuries to several persons. P.W. 12 has stated that Munsu Yadav and others assaulted Harikishun Mistri which caused his death on the spot. P.W. 14 has stated that at the instance of appellant Rajdeo Pandey, Munsu Yadav assaulted his father Harikishun Lohar with spear which caused his death on the spot. Krit Rajak and Mahraj yadav were also assaulted by the members of mob causing their death and injury to several persons. P.W. 20 has also identified Munsu Yadav as one of the members of mob who was armed with spear and caused injury to him (P.W.

20) with spear and several others. The evidence of this witness stands corroborated by the medical evidence of P.W. 17 who has found injury on the person of P.W. 20 and detail discussion has already been made while discussing the evidence of P.W.

17. 41. It appears from the evidence discussed above that all the accused were the members of an unlawful assembly. The members of unlawful assembly

committed the offence in prosecution to the common object of the assembly to remove the obstruction in the flow of water of the canal. They were armed with various weapons and in furtherance of the common object the unlawful assembly has committed the offence, as a result of which three persons have been killed and several persons have been injured. The basis of such constructive liability is mere membership of such assembly with the requisite common object or knowledge. Therefore, once the court Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 39/40 holds that certain accused persons formed unlawful assembly and an offence is committed by any member of that assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, member of that unlawful assembly is to be held guilty of that offence. After such a finding it would not be open to the court to see as to who did actually offensive Act or require prosecution to prove which of the members did the offensive acts. Reference may be made to decisions in the case of Lalji vs. State of U.P., AIR 198.SC 75.and Ram Dular Rai vs. the State of Bihar, AIR 200.SC 1043.

42. Considering the facts and circumstances stated above, I do not find any ground to interfere with the conviction and sentence of Rajdeo Pandey (appellant of Cri. Appeal (D.B.) No. 441 of 1988), Brijbanshi Singh, Kail Dusadh, Doman Yadav, Jai Narain Singh, Chandramani Singh, Ayodhya Pandey, Hirday Singh, Narendra Singh, and Nagesh Pandey (appellants of Cri. Appeal (D.B.) No. 445 of 1988) and Munsii Yadav (appellant of Cri. Appeal (D.B.) No.484 of 1988). Their bail bonds are cancelled and they are directed to surrender before the trial court to serve out the sentence. The learned trial court is also directed to take them into custody to serve out the remaining part of their sentence.

43. In the result, Cri. Appeal (D.B.) No. 441 of 1988 and Patna High Court CR. APP (DB) No.441 of 1988 dt 23-08-2013 40/40 Cri. Appeal (D.B.) No. 484 of 1988 are dismissed, whereas, Cri. Appeal (D.B.) No. 445 of 1988 is allowed in part so for appellants Bindu Singh @ Bindeshwari Singh and Upendra Singh are concerned. (Amaresh Kumar Lal, J) Shyam Kishore Sharma, J:- I agree. (Shyam Kishore Sharma, J) N.A.F.R. Kanchan/-