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**(1989) 10 AHC CK 0061**

**Allahabad High Court**

**Case No:** Criminal Appeal No. 2396 of 1988

Ram Hirdaya Yadav

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** Oct. 21, 1989

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Penal Code, 1860 (IPC) - Section 147, 149, 201, 302, 308

**Citation:** (1990) 14 ACR 91

**Hon'ble Judges:** Usha Kant Verma, J; P.S. Gupta, J

**Bench:** Division Bench

**Advocate:** K.K. Misra and R.N. Rai, for the Appellant;

**Final Decision:** Dismissed

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**Judgement**

U.K. Verma, J.

This is an appeal against the judgment of Sri Ashraf Jamal Siddiqui, IV Additional District and Sessions Judge, Azamgarh dated 15-10-1988 convicting the Appellant Ram Hirdaya Yadava under Sections 302/149, 364/149 and 147 IPC and sentencing him to imprisonment for life u/s 302/149 IPC to ten years rigorous imprisonment and to the payment of fine amounting to Rs. 1000/- and in default of payment of fine to undergo simple imprisonment for one year u/s 364/149 IPC and to one year rigorous imprisonment u/s 147 IPC. The IVth Additional Sessions Judge, it may be mentioned here, had acquitted the Appellant u/s 201 IPC and the co-accused Ram Das Yadava who happened to be his father in respect of all the above charges, giving him the benefit of doubt.

2. The prosecution case as contained in the first information report Ex. Ka-1 lodged at 10.30 P.M. on 15-9-88 at the police station Mubarakpur is that the deceased Bhola was not agreeable to allow the drain of Ram Das and Ram Hirdaya Yadava to flow over the land facing his door. Ram Das had filed a civil suit to prevent Bhola and his

family members from interference with it fifteen to twenty days before the incident. A panchayat had been convened by Bhola to sort-out the differences. The panchayat ruled that Ram Das should discharge the water of his drain in a soak-pit to be built by him. The Appellant Ram Hirdaya Yadava who was posted as a Sub-Inspector of police at the Vindhyachal police station in the district of Mirzapur did not find the decision of the panchayat to be palatable. He threatened the deceased not to interfere with the drain by his exit or else, he would be done away with. On 15-9-1983 at about 8.15 P. M. when Bhola and Mohit were cooking their meals at the latter's shop and Roopa Yadav the younger brother of Bhola was sitting nearby, an Ambassador car of deep military shade came from Azamgarh side and moving slowly stopped a little ahead of the hotel of Bechu on the other side of the road. A person wearing Kurta and Dhoti alighted from the car and approaching him told Bhola that Thakur Sahab of Jiyanpur was calling him for talk. Bhola went along with that person upto the car. There he and the others sitting in the car forcibly dragged Bhola inside. On the front seats of the car were noticed Ram Hirdaya Yadava Appellant and his father Ram Das. The identity of the others in the car was not known. The faces of the six persons were, however, visible in the electric light lit outside and the light of the car inside. Zamiruddin, Satya Ram Yadava and Lal Behari Yadava who were sitting at the shop of Bechu at that time and others raised alarm along with the informant Roopa and Mohit, but the six persons sped away with Bhola. The informant and Satiram pursued the car on the motor cycle of Zamiruddin but they could not catch it up. On reaching Jiyanpur crossing, they were informed by the persons at the betel shop and also others standing nearby that just a little earlier a car with six or seven persons took a swift turn and went on the Azamgarh Nadvi Sarai Road. The motor Cycle was driven in that very direction. A little ahead of village Chhapra sultanpur near Imaliya, they saw the dead body of Bhola lying on the left side of the road with his head downwards fully smeared with blood. Roopa Yadava informant, Satiram and Zamiruddin asked the people of the Imaliya village who had arrived there to take care of the dead body till they returned back after lodging the report.

Prosecution Evidence :

3. The prosecution examined Roopa Yadava PW 3, Zamiruddin PW 1, and Mohit PW 2 to prove the abduction of Bhola from the Bankat Bazar by the Appellant Ram Hirdaya Yadava, his father Ram Das Yadava and the four others unknown who were accompanying them. Roopa Yadava corroborated the prosecution story in all its details dealt with above. He pointed to have dictated the first information report Ex. Ka-1 to Raj Kumar near the Mubarakpur turning where he had reached from village Imaliya on the motor-cycle of Zamiruddin PW 1.

4. Zamiruddin PW 1, stated that Bhola had a readymade garments shop in Bankat Bazar. Bhola as usual was cooking his food at the shop of Mohit at about 8 P.M. He was sitting under his Khaprail shed where Lal Behari, Satya Ram Yadava and Imru

had also gathered. He had ordered for tea from Bechu's shop nearby which an ambassador Car, the colour of which he did not remember, stopped. A person got down from that car and went to Mohit's shop. He could not see as to who else were present there excepting Bhola and his son aged about 7 to 8 years and Mohit and his brother whose name he did not know. The above persons told Bhola that Babu Saheb was calling him. When Bhola went upto the car, he pushed Bhola inside it. A Chappal of Bhola fell near the car. Bhola had raised alarm, while he was being pushed inside. Others also had shouted. He could not see how many persons were inside the car. The back door of the car for some distance remained opened. He followed the car on his motor-cycle 15 to 20 minutes after it had gone. Lal Behari and Satya Ram Yadava accompanied him on the motor-cycle. At the Jiyampur crossing, the people gathered there told him that at first the car went towards Dohari Ghat with great speed, but returned and went towards Azmatgarh Bazar. At the Jiyampur crossing, he had met the Sub-Inspector of the Jiyampur Police Station. He told him to follow on the car. He found the dead body of Bhola at a distance of 18 kilometres from Jiyampur crossing. Bhola was wearing a Bandi and a Chaddi (short trouser upto the thigh). He remained near the dead body for about fifteen minutes during which the Sub-Inspector of Jiyampur Police Station had also arrived. He did not see any light in the car at the time when Bhola was being pushed inside it. There was electric light on the street of Bankat Bazar at the time of the incident. He did not see Roopa Yadava at the time of the incident in Bankat Bazar, but he did not see him in the Imaliya village amongst the ten to fifteen persons there. He knew Ram Das and Ram Hirdaiya Yadava Appellant from before the incident Ram Hirdaiya was a Sub-Inspector in the police department. He was the son of Ram Das. He could not tell whether Ram Hirdaiya Yadava and Ram Das Yadava were involved in the crime or not as he could not see the abductors. Zamiruddin was declared hostile and had been cross-examined by the counsel for the State. In the cross-examination he first stated that no inquiry had been made from him by the Sub-Inspector of Mubarakpur regarding the incident. He, however, in the next breath stated that inquiry had been made. He denied his alleged statement u/s 161 Code of Criminal Procedure that he had seen Ram Das and his son Ram Hirdaiya Yadava Appellant on the front seats of the car by which Bhola had been abducted and murdered. He also denied that when he pursued the car by his motor-cycle, Bhola's brother Roopa was seated on it alongwith him and Satyaram. He expressed his ignorance as to how Roopa reached Imaliya village and denied that he had taken Bhola from Imaliya village to the police station Mubarakpur for lodging the first information report as recorded by the Investigating officer in his statement u/s 161 Code of Criminal Procedure In the cross-examination at the instance of the Appellant he had stated that after the ambassador car, which was used for abduction, had gone away, two police constables who were present in the Bankat Bazar at the time of the incident, went by a truck to the police station Jiyampur giving out that they were going to despatch wireless message with regard to the incident. Zamiruddin after a second thought in reply to the question put on behalf of the Appellant had stated in the

next breath that what he had stated, had not been seen by him, but had been heard by him. The counsel for the Appellant had not got it clarified whether he had not seen the constables or whether he had not seen the truck at all going before him or whether he had merely not heard the constables telling that they were going to send the wireless message and further whether what he had heard was at the time of the incident or later on. Zamiruddin who in the cross-examination at the instance of the counsel for the State had denied the knowledge about the fact as to how Roopa reached Imaliya village where he had been seen by him amongst ten to fifteen persons, gave out in the cross-examination at the instance of the Appellant that Roopa had reached on jeep driven by Mateen along with ten to fifteen persons. Zamiruddin pointed to have been present near the dead body between 9.15 and 9.30 P.M. on 15-9-83.

5. Mohit PW 2 stated that on the other side of the road in front of his, was Bhola's shop and that he had been cooking his food on his Bhatti (furnace). At the time of the incident he, Bhola and his son six to seven years old were at his shop. A person came and told Bhola that Babu Saheb was calling him. He could not tell whether Bhola went along with that person or not. There was an uproar that some one had been taken away- It was 8 O'clock at that time. The electric line was off. The shop keepers had put on their Dhibries. He did not hear any alarm raised by Bhola. He did not know Ram Das and Ram Hirdaya Yadava Appellant. Mohit was declared hostile and was confronted with his alleged statement u/s 161 Code of Criminal Procedure that Roopa was also present at that time, that Bhola at the time of being pushed inside the car raised alarm, that amongst the six persons inside the car were Ram Das and the Appellant, his son, that he had seen them in the electric light and also in the light inside the car, that Zamiruddin had followed the car by his motor-cycle with Roopa Yadava and Satya Ram on the pillion seat, that the chappal of the left foot of Bhola had fallen near the car and that the abduction of Bhola had taken place before him. In the cross-examination at the instance of the counsel for the Appellant, he gave out that two constables of Mubarakpur Police Station were on duty in the Bankat Bazar at the time of the incident. There were no electric poles in the Bankat Bazar, but some shops of the Bazar were electrified and that Zamiruddin was amongst the well off persons of Bankat Bazar and the Sub-Inspector of Police Station Mubarakpur stayed with him on his visit there.

6. The abduction of Bhola by a black ambassador car was also alleged to have been seen by the constable Rammurti Yadava PW 6 and the constable Kishore Yadav who were on law and order duty in the Bankat Bazar. Rammurti Yadava stated that when there was an uproar that Bhola was being abducted by an ambassador car, he chased it on a truck towards Jiyampur side. The car taking a turn went on the Azmatgarh Road, whereas he went to Jiyampur Police Station which was at a distance of one furlong from Jiyampur crossing. The Sub-Inspector of Police Station Jiyampur took him on his jeep and proceeded towards Azmatgarh. They found the dead body of Bhola near the village Imaliya where some other persons including those of the

village Imaliya had also arrived.

7. Jagannath PW 4 deposed that at about 8.15 P.M. on 15-9-1983 while serving as a Sub-Inspector in the Police Station Mubarakpur, he had received an intimation on wireless set that some scoundrals were abducting Bhola Yadava from Bankat Bazar in an ambassador car heading towards Jiyanpur. He alongwith the Station Officer Atmaram and the constables Suresh Misra and Asffaq Ahmad and others went in Government vehicle towards Nadvi Sarai on learning that an ambassador car had also gone in that direction. The dead body of Bhola Yadava was found near Imaliya village on the left side of the road. The Station Officer dropped him there along with a few constables. He could not prepare the inquest report during night due to insufficiency of light. The inquest report, as given out by him, was prepared at 6.00 A.M. on 16-9-1983. Its genuineness was admitted by the counsel for the accused. Jagannath Prasad also proved this document which is Ex. Ka-2 on record. The distance of the village Imaliya from the Police Station, Mubarakpur has been shown to be 21 kilometres. The panches of the inquest report are Roopa Yadava, Lal Behari, Balli, Prabhu and Sukhraj. Jagannath Prasad PW 4 besides proved the diagram of the dead body Ex. Ka-3, letter to the Inspector of the Police Lines Ex. Ka-4, letter for the Chief Medical Officer Ex. Ka-5 and the challan of the dead body of Bhola Ex. K.a-6.

8. Parmeshwar Prasad, Head constable PW 5 pointed that he prepared the chick report Ex. Ka-7 when the FIR Ex. Ka-1 was lodged and by the G.D. entry Ex, Ka-8 registered case. He further gave out that earlier at 9.05 P.M. on 15-9-1983 he had received information from the District Control Room on the R.D. Set that Bhola Yadava of Langarpur was being abducted by an ambassador car. On this information Station Officer Atmaram Yadava CW. 1 alongwith Jagannath Prasad Misra PW 4, constable Vindhyachal Yadav, constable Suresh Misra, constable Riaz Ahmad and constable Asfaq Ahmad armed with weapons left the Police Station on jeep U.S.W. 2490 driven by Paramhans Pandey. The G.D. entry No. 32 in respect of the receipt of this information and the departure of the above police personnel is Ex. Ka-9.

9. Head Constable Bajrangi Singh PW 8 posted at the police station Kopaganj corroborated Head Constable Parmeshwar Prasad PW 5. He stated that at 9.10 P.M. on 15-9-1983 information about the abduction of a person in a black ambassador car had been received on the R.D. set from the police station Jiyanpur. He proved the G.D. entry Ex. Ka-11 regarding it and narrated that the ambassador car IMR-6056 had been checked by him and the constable Manoj Kumar Asthana when it passed through Police Station Kopaganj. Ram Hirdaya Yadava Appellant, who was in police uniform, got down from it and told that he had gone to see his son who was ill and he was thereafter proceeding to Vindhyachal. There were four or five other persons seated in the car. He knew Ram Hirdaya Yadav as he belonged to the Police Station Mubarakpur circle. The Station Officer Jiyanpur went at the Police Station Kopaganj half an hour after Ram Hirdaya Yadava. He mentioned that Ram Hirdaya Yadava

after committing the crime was trying to escape.

10. Mangala Yadava constable clerk of the police station Vindhyachal, District Mirzapur PW 9 deposed that Ram Hirdaya Yadava S.I. who was posted there had gone from the police station at A.M. on 15-9-1983 to give statement in the case State v. Jagdish u/s 308 IPC in the court of the IV Munsif Magistrate and returned back to the Police Station Vindhyachal at 12.05 A.M. in the night between September 15 and September 16, 1983. He proved the G.D. entries Ex. K.a-12 and Ka-13 of the Police Station Vindhyachal dated 15-9-1983 and 16-9-1983 respectively made by the Appellant Ram Hirdaya Yadava himself regarding the above time of his departure and arrival.

11. Dr. S.N. Sinha PW 7 deposed that he had conducted the postmortem examinations of Bhola at 3.30 P.M. on 16-9-1983 while posted as Medical Officer Incharge Distt. Hospital, Azamgarh and found the following ante-mortem injuries on his person :

1. Verticle incised wound 2 cm x 0.5 cm x muscle deep on the back of neck in the middle just below hair margin.

2 Abrasion 2 cm x 1.5 cm on left temple region 2.5 cm lateral to outer angle of left eye.

3 Abrasion 11 cm x 3.5 cm on the front of right upper part of the neck.

4. Abrasion 7.5 cm x 0.5 cm transversely over left middle front of neck.

5. Abrasion 25 cm x 19 cm covering front of chest (medial lower part of right side and mid and lower part of left side) and api gestric region.

6. Abrasion 15 cm x 1 cm x transverse eye of over left illiac crest region horcic spine cut both side vide injury nos. 11, 12, 14 and 17.

7. Abrasion 3.5 cm x 2.5 cm on lateral part of left hip region.

8. Abrasion 25 cm x 2 cm Rt. ant. Sup. illiac spine region.

9. Abrasion 10.5 cm x 5.5 cm lateral part of left deltroid region.

10. Incised stab wound 3 cm x 0.8 cm x chest cavity deep over left side back, mid scapular region 8 cm below the 7th cervical spine.

11. Incised stab wound 3 cm x 2 cm x chest cavity deep left side back on the side of spine 6 cm below injury No. 10 oblique transverse.

12. Incised stab wound 3.5 cm x 15 cm x chest cavity deep on the left side back just by medial side of injury No. 11.

13. Incised stab wound 3 cm x 1.5 cm x chest cavity deep left side back 5.5 cm below injury No. 11 in the same plane.

14. Incised stab wound 3.2 cm x 1.5 cm x chest cavity deep left side back just lateral side of spine 4.5 cm below injury No. 13.

15. Incised stab wound 2 cm x 0.7 cm x chest cavity deep Rt. side back 7.5 cm away to injury No. 10 in the same level (mid scapular region).

16. Incised wound 3 cm x 1 cm x muscle deep Rt. side back 3.5 cm below and lateral to injury No. 15.

17. Incised stab wound 2 cm x 0.5 cm x chest cavity deep on Rt. side back 2.5 cm below injury No. 15 or vertebrae spine region.

18. Incised stab wound 3 cm x 1.5 cm x chest cavity deep Rt. side back 4 cm below and lateral to injury No. 17.

19. Incised wound 2.5 cm x 1 cm x muscle deep Rt. side back 2 cm below injury No. 18 in the same plane.

The internal examinations showed that the 11th right rib was fractured, pleura was punctured on both sides. Both lungs were punctured as a result of the injuries nos. 11, 12, 14 and 17, spine was cut on both sides.

12. The Investigating Officer Atma Ram Yadava CW 1 deposed that on 15-9-1983 he was the Station Officer of the Police Station Mubarakpur in the Azamgarh District. In the night of 15-9-1983 and 16-9-1983 B.B. Singh, S.I. who was posted at his Police Station, brought the papers relating to this case at the Police Station Jiyanpur where he had gone on receiving wire less message about this crime. As this case was of a serious nature, he him self took up its investigation. He recorded the statement of the informant Roopa Yadav PW 3 at the Jiyanpur Police Station while he was in the Bankat Bazar, the Joint S.P. and Circle Officer also arrived and instructed him. He picked up the left foot ❖Chappal❖ of the deceased from the place where he was thrust inside the car and prepared its recovery memo Ex. Ka-18. The site plan of that place Ex.Ka-15 was also drawn by him. The inquest report Ex.Ka-16, it follows from the statement of this witness, had been prepared by S.I. Jagannath Misra on his instruction. He collected the plane and blood stained earth from the site where the dead body of Bhola had been found and scribed the recovery memo Ex. Ka-17. He claimed to have recorded the statements of the witnesses of this case in Jiyanpur, Bankat Bazar, Imaliya, Langarpur and at the Police Stations Kopaganj and Vindhychal. He further stated to have examined the record of Criminal case No. 1112 of 1982, State v. Jagdish u/s 308 IPC and copied the order sheets and recorded the statement of Ram Hirdaya Yadava on 24-9-1983 and submitted the charge sheet Ex. Ka-14 on 21-10-1983. In his cross-examination he clarified that he had gone to the Police Station Jiyanpur on receiving this information through wireless that some scoundrels had abducted Bhola. The papers in this case had been delivered to him ten minutes after his arrival at the Police Station Jiyanpur. Before the receipt of the papers he had already learnt that Bhola had been murdered and his dead body was

lying in village Imaliya which was at a distance of five to six kilometres from the Police Station Jiyanpur.

Statement of the accused and his stand.

13. The Appellant Ram Hirdaya Yadava had pleaded not guilty, but admitted that there was a quarrel with regard to the flow of water and a suit had been filed. He also did not dispute that he left the Police Station Vin dhyachal where he was posted as Sub-Inspector, at 8.00 A.M. on 15-9-1983 and returned back at 12.05 A.M. on 16-9-1983 and that the entries Ex. Ka-12 and Ka-13 had been made by him in the General Diary. He made no statement with regard to the fact as to whether he was examined in the case -- State v. Jagdish -- in the court of the IV Munsif Magistrate on 15-9-1983 or not, but refuted that he had not at all gone to the above court to give his statement. He alleged that he had been falsely implicated and the witnesses had falsely deposed against him on account of enmity. The Investigation of this case was alleged by him to be concocted. He did not lead any evidence in defence.

Motive.

14. We shall first examine whether there was adequate motive for the Appellant to commit the crime. The Appellant in his statement admitted that there was dispute with regard to the flow of water resulting in litigation. The informant Roopa Yadava PW 3 in the first information report Ex. Ka-1 had alleged that Ram Das, father of the Appellant who was co-accused alongwith the Appellant had filed civil suit and a panchayat had been summoned fifteen to twenty days before the incident which directed Ram Das to build a soak pit for flowing therein the water of his hand-pipe but he and his son Ram Hirdaya Yadava who was a Sub-Inspector of Police at the Vindhyachal Police Station in the Mirzapur district did not listen. The deceased Bhola too was adamant that he would not allow Ram Das and the Appellant to discharge their water on his Sahan land. The Appellant thereupon threatened Bhola that he would take his life. The informant Roopa Yadava PW 3 in his statement during the trial corroborated the above allegations. He also stated that the above accused had installed the new hand-pipe one month or one and a quarter of a month before the incident and the threat to kill Bhola had been given twenty days before the incident. In the cross-examination he admitted that a Vakil Commissioner had gone to inspect the subject matter of the suit but denied that a constable named Bidur Kumar had interfered with the execution of the commission and that Bidur Kumar was assisting Bhola. He stated that he did not know Bidur Kumar and could not say whether he was related to Atma Ram Yadava, S.O. CW 1 or not. He refuted the suggestion on behalf of the Appellant that Bidur Kumar was the Sarhoo (husband of the wife's sister) of Bhola and was related to Atma Ram Yadava and that this case had been cooked against the Appellant by the informant with their connivance. So far as the Panchayat is concerned, he pointed that Ram Ajour, Indraman, Prabhu Ghurpatti and Jhinkoo had participated in it, but the decision of the Panchayat had not been reduced to writing. The counsel for the Appellant laid emphasis on the fact that the



informant Roopa in his statement u/s 161 Code of Criminal Procedure as also affirmed by the Investigating Officer Atma Ram Yadava on oath, had given out that quiet prevailed after the institution of the suit. Roopa denied to have made the above statement, but even if he did so, it could not imply that the Appellant had forgotten the resistance offered by Bhola which compelled his father to go to the courts. On the other hand the suggestive question put to Roopa regarding one Bidur Kumar constable interfering with the execution of the commission for Bhola deceased shows that Bhola was not agreeable to give up opposition to the flow of water at any cost and was resisting the suit of the father of the Appellant tooth and nail. It is not the case of the Appellant who is admittedly Pattidar (relative) of the deceased that the deceased or the informant had hurt his feelings by any other act of theirs or he had injured their feelings. The Appellant, however, maintains that he had been implicated on account of enmity. To us it appears that the Appellant had become inimical towards the deceased as he did not allow the water of his hand-pipe to flow through his share land and he has attributed this inimical disposition of his to the informant, and further that the quiet after the institution of the suit occurring in the statement of Roopa u/s 161 Code of Criminal Procedure dealt with above was akin to the lull before the storm during which the Appellant perhaps had been planning to kill Bhola.

15. We now proceed to examine whether Bhola was abducted from Bankat Bazar at about 8.15 P.M. on 15-9-1983 as is the prosecution case. Zamiruddin PW 1 although he was declared hostile, did support these parts of the prosecution story that an ambassador car had stopped five to six steps beyond Bechu's shop, that a person got down from it and brought Bhola from Mohit's shop up to the car after telling him that he was being called by Babu Saheb and pushed him inside the car, that one of the Chappals of Bhola fell outside, that there was hue and cry while Bhola was being whisked away and that he gave a chase to the car on his motor cycle of Bullet make with two persons on the pillion seat and that eighteen kilometers beyond Jiyampur crossing on the road leading to Azmatgarh Bazar, the dead body of Bhola was found in the Imaliya village. The statement of Zamiruddin regarding the abduction of Bhola in the above manner had not been made the subject of cross-examination. Mohit PW 2 who too had been declared hostile by the prosecution for concealing facts which he could not but be aware of stated that while Bhola was preparing food, a person came and told Bhola that Babu Saheb was calling him and that at that time there was a loud clamour that some one had been taken away. If Mohit had not been won over by the Appellant, he would at least have not pretended lack of memory on the question whether Bhola went along with that person or not and further would not have hesitated to state as to who was that person who had been abducted. Bhola on his showing also had been cooking his meals at his shop. In spite of this affinity Mohit has shown indifference towards Bhola in his statement and did not disclose as to what happened to him, it could only be due to the influence of the accused over him and it would be wrong to infer

that the abduction did not take place in the manner alleged by the prosecution as Mohit did not corroborate it. We have already pointed above that Roopa Yadava PW 3 stated on oath that he was present at the shop of Mohit when a person got down from the ambassador car which had stopped near Bechu's shop and came to Bhola and told him that the Bare Baboo of Jiyanpur was calling him. He also pointed out that after taking Bhola upto the car, he gave Bhola a Thokar and thrust him inside. Bhola sought help from the people there to save his life. The four or five persons sitting in the car dragged Bhola inside. Zamiruddin pursued the car on his motor cycle whereon he and Satram were also seated and ultimately found the dead body of Bhola near the Imaliya village on the road side. The Appellant so far as Roopa Yadava PW 3 is concerned suggested that he was not in Bankat Bazar at the time of the abduction of Bhola. Even if we exclude the statement of Roopa Yadava PW 3 on this point and consider it only while actually discussing the participation of the Appellant in the crime in question, it will not make any difference for in addition to the statements of Zamiruddin PW 1 and Mohit PW 2, there is convincing evidence which leaves no room for doubt that the abduction of Bhola took place in the manner alleged by the prosecution.

16. In the cross-examination at the instance of the Appellant both Zamiruddin PW 1 and Mohit PW 2 had stated about the presence of two constables in Bankat Bazar at the time of abduction. Zamiruddin in the last para of his statement deposed that two constables of the Police Station Mubarakpur were present at the time of the incident in Bankat Bazar and after the departure of the car, went by truck giving out that they were going to the Police Station Jiyanpur for getting wireless message sent regarding the abduction of Bhola which must have been obviously for the purpose of getting the accused apprehended. Mohit in para 9 of his cross-examination stated that two constables of the Mubarakpur Police Station were present in the Bankat Bazar at the time of the incident. Rammurti Yadav PW 6 stated that he and Kishore Yadava were constables on duty at 8.15 P.M. on 15-9-83 in Bankat Bazar and during the furore saw that an ambassador car of black shade coming from the Azamgarh side had gone towards Jiyanpur. People were shouting that Bhola was being abducted by the ambassador car. They gave a chase to the abductors by truck. The car turned towards Azmatgarh. He got down at the Jiyanpur crossing and went to the Police Station Jiyanpur which was at a distance of one furlong. He informed the Sub-Inspector there. He took him along with him on the jeep and pursued. The dead body of Bhola was found near Imaliya village. In the cross-examination he stated that he remained posted in the Bankat Bazar between September 12 and September 25, 1983. The public reached the Imaliya village two to four minutes after their arrival. He and the people of Bankat Bazar and the Sub-Inspector of the Jiyanpur Police Station had reached while Roopa PW 3 was there near the dead body. There is nothing in the statement of Rammurti Yadava PW 6 wherefrom it follows that he could have any interest in roping of the Appellant. If that had been the intent and he and Atma Ram Yadava I.O.C W. 1 were to cook evidence, they would not have

hesitated to introduce this story that Bhola deceased was heard crying that Ram Hirdaya Yadava and his father were assaulting and abducting him. The statement of Ram Murti Yadava shows that he was an eye witness about the abduction by car and there is no reason to disbelieve him.

17. It may next be noted in this connection that Jagannath Prasad Misra S.I. PW 4 stated that at about 8.15 P.M. on 15-9-83 information had been received through wireless at the police station Mubarakpur that Bhola Yadava was being abducted from Bankat Bazar by scoundrels with the help of an ambassador car and thereupon he, Atma Ram Yadava S.O. CW 1, Suresh Misra and Ashfaq Ahmad and others by Government vehicle proceeded towards Jiyampur. There, they learnt that the said car had gone towards Nadwa Sarai and so they also proceeded in that direction and found the dead body of Bhola Yadava in the Imaliya village near the culvert. The statement of Jagannath Prasad Misra S.I. PW 4 with regard to receipt of the wireless message had not been challenged in the cross-examination. The head constable Parmeshwar Prasad PW 5 stated that at 9.05 P.M. in the Police Station Mubarakpur he received information through the District Control Room Azamgarh that the bad characters had abducted Bhola Yadava resident of Langarpur in an ambassador car which he noted down in the G.D. at the entry No. 32 at 9.05 P.M. on 15-9-83 marked Ex. Ka-9. The Head Constable Bajrangi Singh PW 8 deposed that at 9.10 P.M. message had been received at the Police Station Kopaganj through wireless that a person was being abducted by an ambassador car and the entry made by the Constable Clerk Manoj Kumar Asthana in his presence in this regard is Ex. Ka-11. Atmaram Yadava CW 1 in his cross-examination gave out that he had received message through wireless about the abduction of Bhola and thereupon he had gone to the Jiyampur Police Station. He corroborated the statement of Jagannath Prasad Misra PW 4 dealt with above. Had Bhola not been abducted from Bankat Bazar, wireless messages would not have been despatched and received at the different police stations referred to above as vouched for by a large number of witnesses and the G.D. entries Ex. Ka-9 and Ex. Ka-11 had not been made at the Police Stations Mubarakpur and Kopaganj.

18. Having dealt with the oral evidence, we would now like to have a look at the post-mortem report Ex. Ka-10 to see if Bhola had sustained any injury as could result to him when he was being forcibly thrust inside the car. One typical injury of that type is the injury No. 2 which is abrasion 2 cm x 1.5 cm left temple region 2.5 cm lateral to the outer angle of left eye. Besides this the injuries 3 to 9 are also abrasions and some of these could have resulted to him when he was being physically subdued inside the car otherwise than through the knife injuries.

19. Yet another circumstance indicating the abduction of Bhola in the manner alleged by the prosecution is the fact that the Chappal of the left foot of Bhola had been found where he had been thrust inside the car as evident from its recovery memo Ex. Ka-18 duly witnessed by Kanhaiya Lal and Parmeshwar Prasad and

prepared by the I.O. Atmaram Yadava CW 1 who deposed that he had picked it from the place of abduction, the site plan of which is Ex. Ka-16, when it was pointed out that it belonged to Bhola deceased. Zamiruddin PW 1 affirmed on oath that a Chappal of Bhola had fallen near the car employed for Bhola's abduction. Zamiruddin had not been cross-examined in this regard too. The Chappal of Bhola could not have been found near the car if Bhola had entered it normal. There is, in our opinion, preponderance of evidence on record on the basis of which it could very safely be concluded that Bhola had been abducted from the Bankat Bazar.

20. We shall now judge whether Ram Hirdaya Yadava Appellant was a member of the unlawful assembly which was responsible for the abduction of Bhola for being murdered and which did commit his murder. The evidence against Ram Hirdaya Yadava Appellant comprises of the testimony of Roopa Yadava PW 3 who gave out that he had actually seen him on the front seat of the ambassador car which had been actually used for abduction, the statement of Bajrangi Singh Head Constable PW 8 who deposed that after the receipt of the wireless message that a person was being abducted by the ambassador car proceeding in the direction of his Police Station Kopaganj, he alongwith Manoj Kumar Asthana constable on sentry duty had checked the ambassador car No. 6056 at 9.15 P.M. on 15-9-83 which had come from Ghosi side and from which Ram Hirdaya Yadava Appellant who was in the police uniform, had got down and the statement of Mangala Yadava constable PW 9 who proved the G.D. entries Ex. Ka-12 and Ex. Ka-13 which were admittedly in the hand writing of the Appellant and wherefrom it follows that the Appellant was away from the Police Station Vindhyachal where he was posted in between 8.00 A.M. on 15-9-83 and 0.05 A.M. on 16-9-83 and could have participated in the crime in question, corroborated by the testimony of Atma Ram Yadava, I.O. CW 1 who did not appear to be interested in the informant or ill-disposed towards the Appellant and who affirmed on oath that the first information report lodged promptly, had reached him at the Jiyampur Police Station where he had gone on receiving the information through wireless that Bhola had been abducted by the scoundrels with the help of the ambassador car which had gone in that direction. So far as the statement of Roopa Yadava PW 3 is concerned, it would need to be examined whether he was at all present at the shop of Mohit, whether it could be seen without obstruction that Ram Hirdaya Yadava was one of the six abductors inside the car and also whether there was sufficient light wherein he could be identified. Roopa Yadava admittedly is the brother of the deceased. The village Langarpur wherein he resides, is at a distance of one mile from the Bankat Bazar. Roopa Yadava in the cross-examination disclosed that he had gone to Bankat Bazar for buying Urea fertilizer as desired by Bhola deceased and had stayed on because the fertilizer shop had been closed before his arrival and the deceased Bhola advised him to stay on. The counsel for the Appellant argued that if Roopa Yadava would really have gone to Bankat Bazar for purchasing Urea, there would have been mention about this fact in the first information report and also in the statement of Roopa Yadava u/s 161 Code of

Criminal Procedure. This contention does not appeal to us because Bankat Bazar is merely one mile from Langarpur and if Roopa went from Langarpur to Bankat Bazar, it was nothing special which he had done for the people of Langarpur must have been going as of routine to Bankat Bazar for even their very ordinary purchases and if he stayed on till quarter past eight in the night, there was not much of over staying at all as he could still have been back to his village by 9.00 P.M. if he had felt the need of it. Roopa Yadava in the cross-examination had pointed in paragraph 21 of his statement that he and his four brothers including the deceased and his father used to live jointly and they were possessed of three houses, five to seven bighas of land and some cattle including cow, bullock and buffalos. In view of the jointness of Roopa Yadava and Bhola deceased, there was no unnaturalness about Bhola asking Roopa Yadava to stay on for the night. The cross-examination of Poopa Yadava PW 3 had mainly been aimed to depict him as a chance and unnatural witness. Roopa Yadava too had stated that it struck him after the incident that he was in the company of Bhola on the day he died and he had acceded to his request, but this was not enough to justify this inference that he was not likely to be naturally present for he vehemently denied the suggestion made to him that he had been going to Bankat Bazar very seldom and had never been staying there during the night. Zamiruddin and Mohit PW. 2, it is true did not affirm about the presence of Roopa Yadava at the time of abduction and Zamiruddin further denied that Roopa Yadava was with him when he pursued the ambassador car on his motor-cycle, but the statements of these witnesses as pointed above, have been declared hostile do not create any doubt that Roopa Yadava was an eye witness as evident from the first information report. Zamiruddin in his statement gave out that he could not see as to who were at the shop of Mohit. He later stated that the son of Bhola aged about seven to eight years was at the shop of Mohit and Bhola was giving him ♦Roti♦ after preparing it. Mohit and his brother whose name he did not know, were there. A person at that time had gone and told Bhola that Babu Saheb was calling him and that person had pushed Bhola inside the car, when he had gone there. He could not see who had seen Bhola being pushed inside the car. The shed of Zamiruddin it follows from his statement and those of Roopa Yadava PW 3 and Atma Ram Yadava CW 1, is almost across the road facing Bechu♦s shop. The refusal on the part of Zamiruddin to disclose as to who had seen Bhola being abducted was only on account of the fact he had decided to help the Appellant and he did not want that accredited evidence should be forth-coming from which a safe conclusion could be drawn about the guilt of the Appellant of whom he might as well have been afraid as he was a Sub-Inspector of Police. The age of Zamiruddin at the time of the incident was merely 28. The street of Bankat Bazar had electric light which was on at the time of the incident as given out by him. If inspite of these factors he expressed his inability to tell the names of the witnesses, the conclusion about his having been won over by the Appellant, was obvious as would also appear from the subsequent discussion. Zamiruddin knew the Appellant from before the incidents. He also knew his father. The ambassador car had stopped near Bechu♦s shop. He was sitting on

the other side of the road. The alarm raised by Bhola and others were likely to make the observation of Zamiruddin and the other witnesses sharper, but in spite of it when he said that he could not say whether the Appellant was inside the car or not, it could not follow that the Appellant was not there or that Roopa Yadava was not there and could not have seen the incident. Zamiruddin admitted that he had not seen Roopa in the Bankat Bazar at the time of the incident but had seen him in the Imaliya village in the midst of ten to fifteen persons where he had stayed for fifteen minutes during which the Sub-Inspector of Jiyampur had also arrived. Zamiruddin did not tell as to how Roopa went from the place of the incident and where. During his cross-examination at the instance of the Appellant however, his power of recollection improved and he gave out that Roopa Yadava reached the Imaliya village along with ten to fifteen persons on a jeep driven by Mateen. The Appellant did not get it clarified that the stay of Zamiruddin in the Imaliya village could be longer than fifteen minutes. If Roopa Yadava had not been present in the Bankat Bazar at the time of the incident, it would not have been possible for Roopa Yadava to be in Imaliya village by the side of the dead body of Bhola where Zamiruddin had also reached while pursuing the ambassador car. Zamiruddin was confronted with his alleged statements u/s 161 Code of Criminal Procedure that Roopa Yadava was with him when he gave a chase to the ambassador car and that Roopa Yadava had also gone to lodge the report with him. Roopa Yadava PW 3 affirmed on oath that he had been on the pillion seat of the bullet motor-cycle of Zamiruddin along with Satya Ram, when Zamiruddin pursued the ambassador car and arrived near the dead body of Bhola after gathering information at the Jiyampur crossing. Rammurti Yadava PW 6 deposed in the cross-examination that he had reached along with the Sub-Inspector of Jiyampur at the place where the dead body of Bhola was lying while Roopa Yadava was present and that persons from Bankat Bazar too had arrived two to four minutes after their arrival in the presence of Roopa Yadava. Parmeshwar Prasad Head Constable PW 5 stated that the first information report of the incident Ex. Ka-1 was lodged in writing at 10.30 P.M. on 15-9-83 and on the basis of it he had prepared the chick report Ex. Ka-7. He had also proved G.D. entry Ex. Ka-9 made by him on the basis of wireless message received from the District Control Room Azamgarh as already pointed out. Simply because no report had been lodged after 11.30 A.M. on 15-9-83 in the Police Station Mubarkpur, it could not be inferred that the first information report of this incident would have been ante-timed when there is nothing else to show that Parmeshwar Prasad could have any grievance against the Appellant. Atma Ram Yadava CW 1 stated that he had reached the Jiyampur Police Station after receiving the wireless message about the abduction of Bhola and received the papers relating to this case through S.I.B.B. Singh there and recorded the statement of Roopa Yadava soon after. The statement of Roopa Yadava about his presence in the Bankat Bazar at the time of abduction of Bhola receives support from the statements of Parmeshwar Prasad PW 5, Rammurti Yadava PW 6 and Atma Ram Yadava CW 1 and we see no reason for not believing the same.

21. The presence of Roopa Yadava PW 3 in the Bankat Bazar at the time of the abduction of Bhola having been established, it is to be examined whether Roopa Yadava did see the Appellant Ram Hirdaya Yadava in the ambassador car along with five other persons who had formed an unlawful assembly for Bhola's abduction. Roopa Yadava and the Appellant Ram Hirdaya Yadava were patti-dars and at the same time neighbours in village Langarpur. In view of those facts Roopa Yadava could have no difficulty in identifying Ram Hirdaya Yadava Appellant easily even in dim light. Besides on such occasions visual power increases and familiar persons causing injuries are not missed. Zamiruddin PW 1 it has already been pointed out above, had given out that the streets of Bankat Bazar had electric lights which were lighted at the time of the incident. The Appellant did not cross-examine Zamiruddin in this respect. The counsel for the State, however, confronted him with his alleged statement u/s 161 Code of Criminal Procedure wherefrom it follows that Zamiruddin had not only stated about the electric light but also about the light inside the car which had got lit when its door was opened for dragging in Bhola. The witness Mohit under the influence of the Appellant in reply to question put by the Appellant's counsel controverted the statement of Zamiruddin that there were streetlights in the Bankat Bazar. The fact that Mohit had given a false statement not only receives support from this circumstance that Zamiruddin had not been cross-examined in respect of his statement about the street lights, but also from the fact that Mohit admitted that some shops in Bankat Bazar had electricity which could not have been provided in the absence of electric poles. Roopa Yadava PW 3 stated that the electric lights in the Bankat Bazar were on at the time of the incident and that the light inside the car was also on and that he identified the Appellant in these lights. In his cross-examination he pointed that there was electric light in the Madai (huts) of both Mohit and Bechu. The prosecution case is that the car which was used for abduction, had been parked between the shop of Bechu and the road. Roopa Yadava PW 3 deposed in the examination-in-chief that it had stopped at a distance of 25 steps from Bechu's shop. In the cross-examination he stated that the shop of Bechu was at a distance of twenty five to thirty steps from Mohit's shop. He denied the suggestion that the distance between the shop of Mohit and Bechu was fifty steps or more. In paragraph 30 of his statement he gave out that the car by which Bhola was abducted, had been parked ten to twelve steps to the north of Bechu's shop and not in between the shop of Bechu and the road towards east. We have discussed at some length above that Bhola had been forcibly pushed inside the car and he had offered resistance and raised alarm and in the course thereof a Chappal of his left foot had also fallen outside the car and he had sustained abrasions. Roopa Yadava PW 3 at that time would surely have been on his feet and his eyes would have been at the car. The distance of thirty steps was not such that he could not have seen Ram Hirdaya Yadava who was, as pointed out by Bajrangi Singh PW 8 in his police uniform. Even if the distance between Roopa Yadava and Bhola had been fifty steps or slightly more, Roopa Yadava PW 3 was in a position to notice him in the electric light of the streets and shops of Bankat Bazar and that

inside light of the car which ordinarily gets lit when its doors are opened. It is now to be seen as to what weight is to be attached to the non-identification by Zamiruddin and Mohit and non-production of some witnesses named in the charge sheet. We have dealt with above how Zamiruddin and Mohit had tried to suppress the truth which could only be under the influence of the Appellant or under his terror. Roopa Yadava PW 3 in his statement had made it clear that Satya Ram, Bechu and Lal Behari named in the charge sheet had been won over by the accused. The non-production of Satya Ram, Bechu and Lal Behari besides cannot be made the basis of an adverse inference against the prosecution in view of the decision in [State of U.P. Vs. Anil Singh](#), . The Hon<sup>ble</sup> Supreme Court while allowing appeal against acquittal, in this case had observed that it is not correct to reject the prosecution version only on the, ground that all the witnesses of the occurrence were not examined. It had further laid down that it was not proper to reject the case for want of corroboration by independent witnesses, if the case made out was otherwise true and acceptable. The reason which the Supreme Court has given for its views has its roots, in our very common experience now that the public generally are becoming more and more reluctant to depose before the court as their own safety and personal interests suffer thereby.

22. We shall now advert to another important circumstance against the Appellant. It is the prosecution case that the car of the Appellant after the incident had been given a chase by the motor-cycle whereon Zamiruddin, Roopa Yadava and Satya Ram were seated; by the truck by which the constable Rammurti Yadava PW 6 had gone from the Bankat Bazar to Jiyanpur and thereafter by the jeep by which the police force including the constable Rammurti Yadava had followed the car under the guidance, of the Station Officer, Jiyanpur. The S.I. Jagannath Prasad Misra PW 4, Station Officer of the Police Station Mubarakpur Atmaram Yadava CW 1 and constable Bajrangi Singh PW 8 were also not silent on receiving the wireless alert with regard to the continuing abduction of Bhola. The witnesses Jagannath Prasad Misra PW 4 and Atmaram Yadava CW 1 had reached the police Station Jiyanpur to intercept the ambassador car and Bajrangi Singh and Manoj Kumar Asthana had started checking the car passing through Kopaganj Police Station. The Appellant and his associates, in view of the alertness of the police, were not in a position to escape unnoticed altogether. Constable Bajrangi Singh PW 8 stated on oath that he checked the ambassador car from which Ram Hirdaya Yadava got down and told him that he had gone to see his ailing son and was proceeding to Vindhychal Police Station where he was posted as Sub-Inspector. Ram Hirdaya Yadava he further stated, was in police uniform. If constable Bajrangi Singh under the circumstances did not detain Ram Hirdaya Yadava and allowed him to go, it would not follow that what he had stated, could not be trusted, when he had no notice towards him and in protecting whom he would have had an interest as he was a superior official in his own department and was known to him from before being a resident of Langarpur which was within the sphere of the Police Station Mubarakpur wherein he had



served as a Head Constable. It had been laid down in [Nathusingh Vs. The State of Madhya Pradesh](#), that the mere fact that the prosecution witnesses are police officers is not enough to discard their evidence in the absence of their hostility to the accused. In Gyan Singh v. State of Punjab, reported in 1974 SCC 406, it had been pronounced that police officials cannot be discredited for being merely police officials. In Dalbir Kaur v. State of Punjab, reported in 1977 CLJ 273 and in [Hazari Lal Vs. State \(Delhi Administration\)](#), the same principles had been followed as laid down in Dwarika v. State, reported in 1954 CLJ 188 that testimony of police officials should be treated in the same manner as testimony of other witnesses and does not require corroboration by independent witnesses on the assumption that the police officials lie. The Supreme Court in [State of U.P. Vs. Krishna Gopal and Another](#), while setting aside the order of acquittal and remanding the case to the High Court had quoted in connection with the appreciation of the evidence of the Investigating officer the observation in [State of Kerala Vs. M.M. Mathew and Another](#), that ♦ prima facie public servants must be presumed to act honestly and conscientiously and their evidence has to be assessed on its intrinsic worth and cannot be discarded merely on the ground that being public servants they are interested in the success of their case. Atma Ram Yadava CW 1 in order to confirm whether the Appellant could have been checked at the Police Station Kopaganj at 9.15 P.M. on 15-9-83 examined the G.D. of the Police Station Vindhyachal of 15-9-83 and 16-9-83 and also perused the record of the Criminal Case No. 1112 of 1982 State v. Jagdish u/s 308 IPC pending in the court of the Munsif Magistrate IV Mirzapur. The Appellant had left the Police Station Vindhyachal at 8 00 A.M. on 15-9-83 and showed his arrival at the Vindhyachal Police Station at 12.05 A.M. on 16-9-83 There is thus no improbability in the Appellant having been checked at the Police Station Kopaganj at about 9.15 P M It is not the case of the aopellant that he had been checked at the Police Station Kopaganj, while he was returning after seeing his son who was not well. He stated that he remained in the court of the IV Munsif Magistrate, Mirzapur throughout the day and returned to the Police Station Vindhyachal at 12.05 A.M. The counsel for the Appellant tried to explain that the Appellant had attended to some other duties of his, but his submission in this regard did not appeal to us. Atma Ram Yadava CW 1 pointed that he did not know constable Bidur Kumar. Even if for argument♦s sake it was believed that any Bidur Kumar constable happened to be related to Bhola deceased, it could not follow that Bidur Kumar could persuade Atma Ram Yadava Investigating Officer to falsely rope in the Appellant when♦ it has not been shown as to how Bidur Kumar could be taken to be linked with Atma Ram Yadava, Investigating Officer in a special way as suggested. Atma Ram Yadava CW 1 affirmed on oath in the cross-examination that he had received the papers relating to the case at the Jiyampur Police Station during the night between 15-9-83 and 16-9-83 itself. If the Appellant had not committed the crime, it was unlikely that he would have been implicated so promptly.

23. The Appellant in the cross-examination of Roopa Yadava suggested that the family members of one Indermani Yadava was ill-disposed towards Bhola as they felt that he had a hand in his murder and that Amerjeet, Kaloo, Prabhu Nath and Chandrajeet and also Hari Kishan were aggrieved with Banarsi, father of Bhola and one of them might have been responsible for his murder. The contention of the counsel for the Appellant with regard to the possibility of Bhola having been murdered by persons other than the Appellant and his associates does not appear acceptable at all for as laid down in [Angnool and Others Vs. State of Uttar Pradesh](#), Roopa Yadava PW 3 being the brother of Bhola deceased would be interested in getting the real culprits rather than innocent persons punished. The fact that the co-accused Ram Das had been acquitted by the Additional Sessions Judge is also not going to help the Appellant as there are additional circumstances against him which have been dealt with above while dealing with the statement of Bajrangi Singh PW 8 that the Appellant had been checked at the Police Station Kopaganj and the statement of Mangala Yadava PW 9 showing that the Appellant was away from the Police Station Vindhyachal between 8.05 A.M. on 15-9-1983 and 12.05 A.M. on 16-9-1983. The fact that Roopa Yadava could not explain the meaning of certain words occurring in the first information report and was not aware of the parentage of the witnesses although mentioned in it, could not lead to the conclusion that he had not lodged the FIR for Zamiruddin and Satya Ram were accompanying Roopa Yadava when he had made the report and they could have got the parentage of the witnesses noted by the scribe who also used certain words in the FIR, the exact meaning of which although not known to Roopa Yadava, communicated what he really wanted to in the proper form. We have, however, taken care to satisfy ourselves that facts contained in the FIR were pointed by Roopa Yadava and as such it is not of any consequence that Roopa Yadava was not able to tell the exact meaning of certain words. The evidence adduced by the prosecution appears to us to be genuine and fully meets the test of probabilities. There is a ring of truth in the statements of Roopa Yadava PW 3, Bajrangi Singh PW 8 and Atma Ram Yadava CW 1 and also the other police witnesses and the basic structure of the case is not shaky at all.

24. This appeal filed by Ram Hirdaiya Yadava against his conviction and sentence on different counts dealt with above fails and is, therefore, dismissed. The Appellant Ram Hirdaiya Yadava is on bail His bail bonds are cancelled. He shall be taken into custody without any undue delay to serve the sentences awarded to him by IV Additional District and Sessions Judge, Azamgarn.