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Ram Hirdaya Yadav Vs State of U.P.

Criminal Appeal No. 2396 of 1988

Court: Allahabad High Court

Date of Decision: Oct. 21, 1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€" Section 161#Penal Code, 1860 (IPC) â€" 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

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 \tilde{A} - $\hat{A}_{\dot{c}}$ $\hat{A}_{\dot{c}}$ s shop and

Roopa Yadav the younger brother of Bhola was sitting nearby, an Ambessador 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 I odging 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 a;so gathered. He had ordered

for tea from BechuÃ-¿Â½s 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 $\tilde{A}^-\hat{A}_{\dot{c}}\hat{A}_{z}$ 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

Jiyanpur 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 Jiyanpur crossing, he had met the Sub-Inspector of the Jiyanpur Police Station. He told him to follow on the car.

He found the dead body of Bhola at a distance of 18 kilometres from Jiyanpur crossing. Bhola was wearing a $\tilde{A}^-\hat{A}_{\dot{c}}\hat{A}'_{\dot{c}}$ Bandi $\tilde{A}^-\hat{A}_{\dot{c}}\hat{A}'_{\dot{c}}$ and a $\tilde{A}^-\hat{A}_{\dot{c}}\hat{A}'_{\dot{c}}$ Chaddi $\tilde{A}^-\hat{A}_{\dot{c}}\hat{A}'_{\dot{c}}$

(short trouser upto the thigh). He remained near the dead body for about fifteen minutes during which the Sub-Inspector of Jiyanpur 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 $\tilde{A}^-\hat{A}_{\dot{c}}\hat{A}^1_2$ 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 Jiyanpur 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 htm, 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 lateron. 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 alongwith 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.

Mohit PW 2 stated that on the other side of the road in front of his, was Bholaï¿Â½s shop and that he had been cooking his food on his

 $\tilde{A}^-\hat{A}_{\dot{c}}\hat{A$

that Babu Saheb was calling him. He could not tell wrtether Bhola went along with that person or not. There was an uproar that some one had

been taken away- It was 8 OÃ-¿Â½clock at that time. The electric line was off. The shop keepers had put on their \tilde{A} -¿Â½DhibriesÃ-¿Â½. 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 bim 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 Jiyanpur side. The car taking a turn went on the Azmatgarh

Road, whereas he went to Jiyanpur Police Station which was at a distance of one furlong from Jiyanpur crossing. The Sub-Inspector of Police

Station Jiyanpur 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.

Head Constable Bajrangi Singh PW 8 posted at the police station Kopaganj corroborated Head Constable Parmeshwar PrasadPW 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 25 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 $\tilde{A}^-\hat{A}_{\dot{c}}\hat{A}_{\dot{c}}^{\dot{c}}$ 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 Vindhyachal. 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 bis 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 adament that he would not allow Ram Das and the Appellant to discharge their water on his Sahan land. The

Appellant thereupon threatend 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 $\tilde{A}^-\hat{A}_{\dot{c}}\hat{A}^1_{\dot{c}}$ 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 Ajor, 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 tp 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 \tilde{A} - \hat{A} \hat{A} \hat{A} is not the case of the Appellant who is admittedly \tilde{A} - \hat{A} \hat{A} \hat{A} \hat{A} Pattidar \tilde{A} - \hat{A} \hat{A} \hat{A} \hat{A} (relative) of the deceased that the deceased or the informant had

hurt his feelings by any other act of their $\tilde{A}^-\hat{A}_c$ \hat{A}_s or he had injured their feelings. The Appellant, however, maintain 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 sahan land and he has attributed this inimical disposition of his to the informant, and further that the $\tilde{A}^-\hat{A}_L\hat{A}_L^2$ quiet $\tilde{A}^-\hat{A}_L\hat{A}_L^2$ 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 \tilde{A} - \hat{A} ¿ \hat{A} ½s shop, that a person got down from it and brought Bhola from Mohit \tilde{A} - \hat{A} ¿ \hat{A} ½s shop upto 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 Jiyanpur 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 slated 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 atleast have not pretended lack of memory on the question whether

Bhola went alongwith 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. If inspite 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 Bechuï¿Â½s 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 \tilde{A} - \hat{A} $\hat{\lambda}$ \hat{A} $\hat{\lambda}$ Thokar \tilde{A} - \hat{A} $\hat{\lambda}$ \hat{A} $\hat{\lambda}$ 2 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 depirture 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 Jiyanpur. 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 had

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 Jiyanpur Police Station. He corroborated the statement

of Jagannath Prasad Misra PW 4 dealt with above. Had Bhola not been bbducted from Bankat Bazar, wireless messages would not have been

despat; hed and received at the different police stations referred to above as vouchsa fed 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 Kopagani.

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 susta ned 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 bad 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 BholaÃ-¿Â½s 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

Jiyanpur 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 acceeded 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 $\tilde{A}^-\hat{A}_{\dot{c}}\hat{A}_{\dot{c}}$ Roti $\tilde{A}^-\hat{A}_{\dot{c}}\hat{A}_{\dot{c}}$ 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 \tilde{A} - $\hat{A}_{\dot{c}}\hat{A}_{\dot{c}}$ 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 acredited 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 \tilde{A} - $\hat{A}_{\dot{c}}\hat{A}_{\dot{c}}$ 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 if inspite 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 bad 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 Jiyanpur 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 alongwith 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 alongwith Satya Ram,

when Zamiruddin pursued the ambassador car and arrived near the dead body of Bhola after gathering information at the Jiyanpur crossing.

Rammurti Yadava PW 6 deposed in the cross-examination that he had reached alongwith the Sub-Inspector of Jiyanpur 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 Jiyanpur 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 $\tilde{A}^-\hat{A}_c\hat{A}'$ s abduction. Roopa Yadava and the Appellant Ram Hirdaya Yadava were $\tilde{A}^-\hat{A}_c\hat{A}'$ 2pattidars $\tilde{A}^-\hat{A}_c\hat{A}'$ 2 and at the same time

neighbours iu 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 familier 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 won over witness Mohit under the influence of the Appellant in reply to

question put by the Appellant \tilde{A} \hat{A} \hat{A} s counsel controverted the statement of Zamiruddin that there were streetlights in the Bankat Bazar. The fact that

Mohit had given a fa \tilde{A} - $\hat{A}_{\dot{c}}$ $\hat{A}_{\dot{c}}$ se 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 $\tilde{A}^-\hat{A}_{\dot{c}}\hat{A}'_{\dot{c}}$ Madai $\tilde{A}^-\hat{A}_{\dot{c}}\hat{A}'_{\dot{c}}$ (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 $\tilde{A}^-\hat{A}_{\dot{c}}\hat{A}_{\dot{c}}$ 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 $\tilde{A}^-\hat{A}_{\dot{c}}\hat{A}'_{2}$ 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

BechuÃ-¿Â½s 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 $\tilde{A}^-\hat{A}_2\hat{A}_2$ 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 Honï¿Â½ble 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 Vindhyachal 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 $\tilde{A}^-\hat{A}_{\dot{c}}\hat{A}^{1/2}$ 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 $\tilde{A}^-\hat{A}_c$ \hat{A}_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 $\tilde{A}^-\hat{A}_{\dot{c}}\hat{A}^{1/2}$ 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 Jiyanpur 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 Angnoo 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 appea $\tilde{A}^-\hat{A}_{\dot{c}}\hat{A}_{z}$ is 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.