

Jai Hari Bera and Others Vs State of Bihar (now Jharkhand)

Court: Jharkhand High Court

Date of Decision: Feb. 21, 2003

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 154
Penal Code, 1860 (IPC) â€” Section 300

Citation: (2003) CriLJ 2188 : (2003) 2 JLJR 235

Hon'ble Judges: Vishnudeo Narayan, J; Lakshman Uraon, J

Bench: Division Bench

Advocate: A.K. Kashyap, Ananda Sen and Sandeep Jha, for the Appellant; Malti Chaurasia, Assistant Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

Vishnudeo Narayan, J.

This appeal has been directed by the appellants named above against the impugned judgment dated 20th

September, 1999 passed in Sessions Trial No. 8 of 1997 by Sri S. H. Kazmi, 3rd Additional Sessions Judge, Jamshedpur, East Singhbhum

whereby and whereunder all the appellants aforesaid were found guilty under Sections 302/34 and 201/34, I.P.C. for committing the murder of

Prasanna Kumar Bera, the uncle of P.W. 2, Dinesh Chandra Bera, the informant and also causing the evidence of the said offence to disappear

with intention to screen themselves from legal punishment and they were convicted and sentenced to undergo R. I. for life for the offence u/s

302/34 I.P.C. but no separate sentence for the offence u/s 201/34 I.P.C. was imposed against them.

2. The prosecution case has arisen on the basis of the Fard beyan (Ext. 1) of P.W. 2, Dinesh Chandra Bera, the informant recorded by P.W. 8,

ASI, Lalit Lakra of Gurabanda P.S., Ghatshila on 22-4-1996 at 8.20 hours in village Munda, P. S. Gurabanda regarding the occurrence which is

said to have taken place on that very day at 6.00 hours at the pond situate in village Munda aforesaid. The formal F.I.R. (Ext. 2) was drawn

instituting the case on the basis of the Fardbeyan on 22-4-1996 at 16.00 hours and the F.I.R. and the Fardbeyan were sent to the Court

empowered to take cognizance by special messenger which was received in the said Court on 24-4-1996.

3. The prosecution case, in brief is that Prasanna Kumar Bera, the deceased of this case, and the uncle of P.W. 2, the informant, had gone to the

pond in his village Munda at about 6,00 O'clock in the morning on 22-4-1996 for attending the call of nature and in that course he was on the

bank of the said pond. It is alleged that appellant Mochiram Bera armed with spade, appellants Satyanarayan Bera and Jai Hari Bera each armed

with Tangi (axe) came there from the nearby bush and started assaulting Prasanna Kumar Bera aforesaid by means of their respective weapons

causing the death of the deceased there and thereafter appellant Jai Hari Bera was severing the neck of the deceased from his trunk. P.W. 5,

Sitaram Bera, who was coming to the said pond, saw the occurrences and raised alarms and P.W. 4, Chharu Ram Soren and P.W. 1, Sampat

Bera alias Shyampad Bera came there running and saw the appellant Jai Hari Bera along with two other appellants fleeing away from the said

place of occurrence with the head of the deceased after severing it. The prosecution case further is that Anil Kumar Bera, Somendra Barik and

Shiv Shankar Basuri, Mukhiya of Gram Panchayat, Koena had conspired for the commission of the murder of the deceased after making a plan

for that with the appellants in the previous night. It is also alleged that the commission of the murder of the deceased is due to the old existing

enmity. The severed head of Prasanna Kumar Bera, the deceased of this case, was recovered in the course of investigation on 24-4-1996 from a

pond of Village Angarpara and the said severed head was wrapped in a Gamchcha and a seizure list (Ext. 6) in respect thereof was prepared and

the said severed head was also sent for post mortem examination.

4. The appellants have pleaded not guilty to the charges levelled against them and they claim themselves to be innocent and to have committed no

offence and that they have been falsely implicated in this case due to enmity which is existing and alive between the parties.

5. The prosecution, has examined in all eight witnesses to substantiate the charges levelled against the appellants. P.W. 2, Dinesh Chandra Bera is

the informant of this case and the nephew of the deceased. P.W. 5, Sitaram Bera the nephew of the deceased, P.W. 4, Chharu Ram Soren and

P.W. 1, Sampat Bera alias Shyampad Bera, the cousin of the deceased and the uncle of the informant have been named as eye witnesses of the

occurrence in question in the Fard beyan. P.W. 4 has turned hostile and does not at all support the prosecution case whereas P.W. 5 has also

turned hostile but in part regarding the occurrence P.W. 7, Sumati Bera, daughter of the deceased though not named in the Fardbeyan, claims

herself to be an eye witness of the occurrence. P.W. 6 Ravindra Nath Bera is a witness regarding recovery of the severed head of the deceased

wrapped in a Gamchacha from the pond of Village Angarpara and is a witness on the seizure list (Ext. 6) regarding the recovery and seizure of the

said severed head of the deceased. The said Gamchcha along with the ploythene is material Ext. 1 in this case. P.W. 8, Lalit Lakara is the I.O. of

this case and he has proved the Fard beyan (Ext. 1), formal F.I.R. (Ext. 3), photo copy of the inquest report (Ext. 4) extract from the C.D. relating

to the inquest report (Ext. 5) and also the photo copy of the seizure list (Ext 6) P.W. 3, Dr. Nawal Kishore Sinha has conducted the post mortem

examination of headless dead body of the deceased and also of the severed head of the deceased and the post, mortem report in respect thereof

per his pen is Ext. 2 in this case.

6. No oral and documentary evidence has been adduced on behalf of the defence.

7. In view of the oral and documental evidence on the record, the learned Court below found all the appellants guilty for the offence under Sections

302/34 and 201/34 I.P.C. and convicted and sentenced them as stated above.

8. Assailing the impugned judgment against the weight of the legal evidence on the record and swayed by conjectures and surmises it has been

submitted by the learned counsel for the appellants that the alleged eye witnesses such as PWs. 1, 7, 2 and 5 have no occasion at all to witness the

occurrence and they cannot be said to be the ocular witnesses of the occurrence and there are inherent inconsistencies and material contradictions

in their evidence which cast a cloud of suspicion to the credibility of the aforesaid witnesses as ocular witnesses and in view of the admitted enmity

the appellants have been falsely implicated in this case with a view to wreak vengeance against them Elucidating further regarding the competency

of the aforesaid witnesses it has been submitted that according to the averments made in the Fardbeyan P.W. 5, Sitaram Bera is said to have

raised alarms and P.W. 1, Shyampad Bera and P.W. 4, Chharu Ram Soren came to the place of occurrence at the relevant time but P.W. 5,

Sitaram Bera in his evidence on oath does not whisper regarding raising of the alarms by him and P.W. 4, the other hostile witness has deposed

not to have seen the occurrence at all and in the absence of any alarms by P.W. 5, Sitaram Bera the fact of coming to the place of occurrence and

the presence of P.W. 1, Sampat Bera, P.W. 2, Dinesh Chandra Bera, the informant and P.W. 7, Sumati Bera does not arise at all and further

P.Ws. 1, 2 and 7 besides P.W. 5 have been set up as the ocular witnesses in this case as a result of cool consideration, deliberation and after

thought in conspiracy with P.W. 8, the I.O.. which is evident from the testimony of P.W. 7 in the concluding portion of para 8 itself which is to the

effect that the I.O. remained at her residence for one to two hours in which it has been decided as to who will appear as witness in support of the

case. It has also been contended that P.W. 8, the I.O., has deposed that the said pond which is the place of occurrence is surrounded by 15" high

ridge by all the four sides and there was a 2" x 1/2" x 1" stone in the water of the pond below the said 15" high ridge of the pond and a portion of

the stone was inside the water on which it is said that the deceased was cleaning his hand and it is highly improbable in view of the topography of

the pond stated above that P.W. 5, Sitaram Bera had any occasion to see the occurrence in question while he got up after easing himself from the

field away from ridge of the pond and further it appears from his evidence that he did not at all raise alarms seeing the alleged occurrence and in his

view of the matter the probability of P.W. 1, Sampat Bera, P.W. 2, the informant and P.W. 7, Sumati Bera coming to the place of occurrence at

the relevant time of the commission of the occurrence is totally ruled out and in this view of the matter they cannot be said to be the ocular

witnesses of the occurrence. It has further been contended for the appellants that the manner of the occurrence as averred in the Fard beyan (Ext.

1) has no correlation at all with the medical evidence as deposed by P.W. 3, who has conducted the postmortem examination on the dead body of

the deceased. In this connection it has been stated that there is averment in the Fard beyan that all the appellants started inflicting blows

continuously on the person of the deceased till he died and thereafter appellant Jai Hari Bera chopped off the head of the deceased from his trunk

and P.W. 1 in his evidence has deposed in respect thereof and he specifically deposed that appellant Jai Hari Bera assaulted the deceased on his

neck and appellants Satyanarayan Bera and Mochi Beri assaulted on the shoulder and waist on the deceased but surprisingly enough the medical

witness has found only four injuries on the dead body of the deceased including an injury on the abdomen which is alien to the manner of the

occurrence of the prosecution case and the medical witness has not found any injury on the waist of the deceased which is inconsistent with the

evidence of the prosecution case. It has also been contended that existence of only four injuries in view of the manner of assault as averred in the

Fard beyan is equally inconsistent with the manner of assault with the prosecution case as averred in the Fard beyan. The further contention of the

learned counsel for the appellants is that all the alleged witnesses are highly interested and partisan witnesses, and they have animus to depose

falsely in this case in view of the admitted enmity existing and alive between the parties and on this score alone their evidence is fit to be brushed

aside. It has also been contended that suspicion was cast on Anil Kumar Bera, Somendra Barik and Shiv Shanker Basuri having conspired with

the appellants in the commission of the murder of the deceased and this fact has specially been averred in the Fard beyan (Ext. 1) of the informant,

but the I.O. has not made any investigation in respect thereof which makes the entire prosecution case suspicious. It has also been contended that

the post mortem report dated 23-4-96 is collusive and there is an interpolation therein as it contains regarding the post mortem of the chopped

head alleged to be of the deceased which was as per prosecution case has been recovered on 24-4-1996 and brought before the medical witness

on 25-4-1996. Lastly it has been submitted that Section 157 of the Cr. P.C. casts a duty upon the I.O. to forthwith send the report of the

cognizable offence to the Magistrate empowered to take cognizance and F.I.R. in a criminal case and particularly in a murder case is a vital and

valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the F.I.R. is

to obtain the earliest information regarding the occurrence in which the crime was committed including the names of the actual culprit and parts

played by them, the weapons, if any, used and also the name of eye witness, if any, and the delay in lodging the F.I.R. often results in

embellishment which is a creature of an after thought and on account of delay the F.I.R. not only gets bereft of the advantage of spontaneity,

danger also creeps in of the introduction of a coloured version or an exaggerated story and sending the report to the concerned Magistrate after

considerable delay is a circumstance which provides a basis to raise suspicion that the F.I.R. is the result of consultation deliberation and it was

recorded much later than the date and time mentioned in it and at the same time it discloses that the investigation is not fair and forthright. In this

connection it has been submitted further that the case was instituted vide Ext. 2 on 22-4-1996 at 16.00 hours and F.I.R. and Fard beyan were

sent by special messenger which were received in the Court empowered to take cognizance on 24-4-1996 and there is no explanation coming on

the record by the prosecution in respect thereof which clearly indicates that the Fard beyan and the F.I.R. are ante timed as a result of deliberation

only with a view to falsely implicate the appellant in this got up case. As such, the impugned judgment suffers with legal infirmities and is

unsustainable.

9. Refuting the contention advanced on behalf of the appellants it has been submitted by the learned A.P.P. that the Fard beyan and F.I.R. can

never be said to be anti ante-timed and ante-dated in the facts and circumstances of this case as the Fardbeyan was recorded within two hours of

the occurrence and prior to that the I.O. got information of the occurrence having taken place in village Munda and S.D. entry in respect thereof

was made and police rushed to the place of occurrence where the Fard beyan was recorded and the case was also instituted as per formal F.I.R.

(Ext. 2) on that very day at 16.00 hours. The inquest report was prepared at 8.30 hours on the day of the occurrence and the post mortem of the

headless dead body was conducted on 23-4-1996 at 11.30 hours i.e., the following day of the occurrence and in this view of the matter the

receipt of the F.I.R. and the Fard beyan to the Court empowered to take cognizance on 24-4-1996 cannot in itself be a ground to doubt the

F.I.R. as ante timed and ante dated and to throw away the prosecution case in its entirety on this score. It has also been submitted that P.W. 1,

P.W. 7 and P.W. 2 besides P.W. 5 are the ocular witnesses of the occurrence and they have seen the assault being perpetrated on the deceased

by the appellants at the place of the occurrence and their testimony is reliable. It has also been submitted that the testimony of the aforesaid

witnesses cannot be brushed aside simply because there is enmity existing and alive between the parties prior to the occurrence specially when

there is consistency in the testimony of the aforesaid ocular witnesses regarding the manner of the assault corroborated by the medical witness and

there is also ring of truth in their evidence. As such, there is no illegality at all in the impugned judgment.

10. It will admit of no doubt that the occurrence is said to have taken place at 6.00 hours on 22-4-1996 at the pond in village Munda in which

Prasanna Kumar Bera, the uncle of informant was done to death and his headless dead body was found on the stone on the bank of the pond. The

photo copy (Ext. 5) made from the attested copy of inquest report (the original of which has not been brought on the record) is Ext. 5 in this case

and it appears from the inquest report that the I.O. has found the dead body of the deceased without head and there were injuries on the right and

left shoulder on the dead body of the deceased besides an injury near the waist caused by sharp cutting weapon. It appears from the evidence of

P.W. 8, the I.O. that no blood was found at the place of occurrence and there was a white dirty Gamchcha wrapped in the waist of the dead body

of the deceased which was wet. The dead body was sent for post mortem examination which was conducted by P.W. 3, Dr. Nawal Kishore

Sinha, P.W. 3 has deposed to have conducted the post mortem examination on the headless dead body of the deceased on 23-4-1996 at 11.30

hours and has found the following ante-mortem injuries on the said headless dead body of the deceased :

1) Sharp cutting wound on the root of the neck, vessels, tendons were visible, all important vessels were damaged. Head was chopped off and

separated from the root of the neck

2) Sharp cutting wound on left shoulder -- 6" x 3" x 2

3) Sharp cutting wound on lower part of left side of abdomen -- 3" x 1" x 1".

4) Sharp cutting wound on right shoulder -- 3" x 1" x 1".

The medical witness has deposed that the head of the dead body was chopped off and was not available at that time when he had conducted the

post mortem examination. The medical witness has also deposed that death of the deceased has occurred due to the shock and haemorrhage

caused by injury no (1) aforesaid caused by sharp cutting weapon. The medical witness has also deposed that injury Nos. (2) to (4) are simple in

nature and the time elapsed since death of the deceased is within 36 hours of the post mortem examination. He has further deposed that he has

prepared the post mortem report. He has also deposed that severed head of the deceased said to have been recovered on 24-4-1996 was

brought before him on 25-4-1996 for post mortem and he had made entry in respect of the chopped head of the deceased in the said post mortem

report which was already prepared on 23-4-1996. The post mortem report (Ext. 2) is definitely not a suspicious document simply because of the

fact that there is a mention therein regarding the severed head of the deceased brought before the medical witness for its post mortem on 25-4-

1996. The medical witness in his cross-examination has specifically stated clarifying as to how the entry regarding the severed head of the

deceased has been made in the post mortem report (Ext. 2).

11. Before advert to the evidence regarding the manner of the occurrence, it is essential to mention at the very outset that there is enmity existing

and alive between the deceased and the informant on the one hand and the appellants on the other hand prior to the occurrence in question P.W.

2, the informant, in concluding portion of para 10, P.W. 1 in para 10 and para 12, P.W. 6 in para 3 and P.W. 7 in para 3 have admitted regarding

the existence of enmity between the deceased and the appellants and they were also on litigating terms and some of the witnesses aforesaid have

also deposed against the appellants in the cases which were sub judice between the parties. P.W. 2, the informant and P.W. 7 are the son and

daughter of the deceased of this case P.W. 1 is the cousin of the deceased. P.W. 5 is the uncle of the deceased and P.W. 6 is also the nephew of

the deceased and all the aforesaid witnesses are closely related with the deceased as stated above and they are the agnates of the deceased.

Therefore all the aforesaid witnesses are related and partisan witnesses having animus against the appellants.

Therefore, having regard to the rule of

caution we have to scrutinize their evidence with greater care and caution. The rule of prudence also requires that there should be some

corroboration in respect of their evidence by any independent natural and reliable witness in respect thereof. It is the duty of the Court to separate

the truth from falsehood and the chaff from the grain. In view of the close relationship witnesses naturally would have a tendency to exaggerate or

add facts but while appreciating the evidence, exaggerated facts are to be ignored unless it affects the substratum of the prosecution story. While

appreciating the evidence of a relative witness the approach must be, whether the evidence of the witness read as a whole appears to have a ring

of truth. Once that impression of truth is found it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view

the deficient, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor

of the evidence. Minor discrepancies or trivial matters not touching the core of the case, a hyper technical approach in perusal of the evidence

should be avoided. It is also the settled principle of law that the evidence of close relatives of the deceased cannot be discarded on the ground of

their relationship with the deceased. However the Court must scrutinize the evidence of such relative witnesses with care and caution. There is

common tendency of outsiders not to get themselves involved in a criminal case and it would be quite natural that no independent witness would

come forward to assist the prosecution in a case of murder. Even with regard to the interested witnesses being close relatives it is the duty of the

Court to separate the truth from falsehood and in view of the close relationship they would not leave out the real culprit and implicate any innocent

person and while appreciating the evidence of relative witnesses, the approach must be as to whether the evidence of the witnesses read as a

whole appears to have a ring of truth.

12. It has been averred in the Fard beyan that it was P.W. 5, Sitaram Bera, who has raised alarms regarding the occurrence when he saw the

occurrence while coming to the pond and on those alarms P.W. 1 and P.W. 4 had come to the place of occurrence. The Fard beyan does not

whisper regarding the presence of any other witness of the prosecution including P.W. 2 and P.W. 7 at the place of occurrence during the alleged

commission of the offence. P.W. 5 Sitaram Bera has deposed that he had gone to his field in the morning with cow dung and while he was

returning after throwing the cow dung in the said field he saw appellant Jai Hari Bera inflicting injury on the person of the deceased and he became

nonplussed and sat on the ground catching hold of his head. He has further deposed that he did not raise alarms and after recomposing himself he

came to the village and narrated about the incident to the villagers. He has further deposed that he is unable to tell regarding the weapon with which

appellant Jai Hari Bera was assaulting the deceased. He has also deposed that he is a witness on the inquest report of the dead body of the

deceased. The evidence of P.W. 5 completely excludes the arrival of P.W. 4 and P.W. 1 at the place of occurrence as alleged in the Fardbeyan of

the informant on his alarms because as per his evidence P.W. 5 has not raised any alarms rather he has narrated the incident to the villagers when

he returned to his village from the said field. Here I will revert to the topography where the headless trunk of the deceased was found. The I. O.

has specifically deposed in his evidence on oath that the pond was surrounded by 15" high ridge from all sides and the land in the vicinity of the

said pond was below the ridge surrounding the said pond. For this the evidence of P.W. 8 appearing in para 3 of the (sic) I.O. is referred to.

Therefore, in view of the topography of the pond in question as per the objective finding of the I.O. it is highly improbable that P.W. 5 had any

reason to witness the actual assault on the deceased by appellant Jai Hari Bera, as deposed. Therefore, the evidence of Sitaram Bera though a

hostile witness is fit to be brushed aside on this score alone. Furthermore, P.W. 5, Sitaram Bera in para 3 of his cross-examination has deposed in

the most clear and Unequivocal terms that his eye sight is weak for the last 5-6 years and he is unable to see properly. He has also deposed that he

is unable to identify the appellants in the dock from the witness box. The Court has observed that this witness has identified the appellants going

near the dock of the accused. He has also deposed that he is unable to walk and his son-in-law Tarapado has brought him to the Court catching

him. This evidence of P.W. 5 also casts a cloud of suspicion regarding his testimony that he has seen appellant Jai Hari Bera inflicting injuries on the

person of the deceased from the field from where he was returning after throwing the cow dung, P.W. 4, Chharu Ram Soren has deposed that he

has not seen the occurrence rather he has heard about the incident in the village and he has been declared hostile by the prosecution P.W. 1 has

deposed that at about 6.00 O'clock in the morning which is the time of alleged occurrence he was easing himself in the field west of the said pond

and the deceased had also gone to attend the nature's call and he was washing his mouth sitting on the stone at the bank of the pond. He has also

deposed that he heard the alarms raised by P.W. 5, Sitaram Bera. We have to bear in mind that P.W. 5, Sitaram Bera has never raised any alarms

as per his evidence which I have discussed above. P.W. 1 has further deposed that after hearing the alarms raised by P.W. 5, Sitaram Bera he

stood up where he was easing and has seen the assault on the neck of the deceased perpetrated by appellant Jai Hari Bera by Tangi and thereafter

appellants Satyanarayan Bera and Mochi Bera assaulting the deceased on his shoulder and waist by their respective weapons, i.e., Tangi and

Kudal respectively. His evidence is further to the effect that thereafter appellant Jai Hari Bera chopped off the head of the deceased and wrapped

in a Gamchcha and fled away from there along with other two appellants. Here again we revert to the testimony of the I.O. regarding the

topography of the pond in question. The said pond is surrounded by a ridge 15" in height from all sides. P.W. 1 was easing himself west of the

pond in the field. There is a 15" high ridge between the field where P.W. 1 was easing himself and the pond which is the place of occurrence. P.W.

1 has not whispered in his evidence on oath that on the alleged alarms of P.W. 5, Sitaram Bera he had gone over the ridge of the pond from where

he has witnessed the occurrence. His evidence is specific that he has witnessed the occurrence from the place where he was easing. It is, therefore,

highly improbable for P.W. 1 to see the actual assault perpetrated on the deceased by the appellants from the place where he was easing. In this

view of the matter P.W. 1, Sampat Bera alias Shyampad Bera can never be said to be an ocular witness of the occurrence in question. He has also

deposed that he has not chased the appellant while they were fleeing away with the chopped off head of the deceased wrapped in a Gamchcha.

He has also deposed that he had raised alarms and P.W. 1 and P.W. 2, the informant and P.W. 4, Chharu Ram Soren had come to the place of

occurrence. He has specifically deposed that he had raised alarms when assault was being perpetrated on the neck of the deceased. In para 9 he

has deposed that P.W. 2 came to the place of occurrence at 6.20 hours. According to the prosecution case occurrence has taken place at 6.00

hours and his evidence is further to the effect that he met P.W. 2 the informant for the first time at 6.20 hours at the place of occurrence where he

had reported regarding the occurrence to him. Therefore, the evidence of P.W. 1 excludes the presence of P.W. 2, the informant at the place of

occurrence during the relevant time P.W. 1 in his evidence on oath does not at all whisper a word regarding the presence of P.W. 7. Sumati Bera,

the daughter of the deceased coming to the place of occurrence on his alarms P.W. 2 also in his evidence does not state at all regarding the

presence of P.W. 7 at the place of occurrence. P.W. 2, the informant has deposed that he was going to the pond from his house at about 6.00 or

6.15 hours. P.W. 8, the I.O., has deposed in para 3 of his evidence that house of P.W. 2, the informant is situated at a distance of 500 yards from

the said pond P.W. 2 has not deposed that while coming to the pond he had heard the alarms raised either by P.W. 5. Sitaram Bera or P.W. 1,

Sampat Bera alias Shyampad Bera. He has specifically deposed that it is false to say that he has reached at the place of occurrence on the alarms

of P.W. 1, and further he also does not remember as to whether he has averred in the Fardbeyan that he has come to the place of occurrence on

the alarms of P.W. 1 and had seen the occurrence along with P.W. 1. Therefore, the evidence of P.W. 2 that he has seen the actual assault in the

manner as averred in the Fard beyan (Ext. 1) does not at all inspire confidence. In this connection the evidence of P.W. 2 appearing in para 2 read

with the evidence of P.W. 8 appearing in para 20 has its relevancy. P.W. 2 has deposed that it is not a fact that he has stated before the I.O. that

P.W. 5, Sitaram Bera was going to the pond and when he saw the occurrence and he raised the alarms and P.W. 4 and P.W. 1 ran towards the

pond on those alarms and they thereafter ran to his house and informed about the occurrence and on that information he had gone to that pond

where he had seen all the three appellants fleeing away P.W. 8, the I.O. in para 20 has deposed that P.W. 2 has stated before him that P.W. 5.

Sitaram Bera was going to the pond and he raised alarms and thereafter P.W. 4 and P.W. 1 went to the said pond and from there they ran to his

house and from there he (P.W. 2) came running to the pond. In view of the evidence aforesaid P.W. 2 can never be termed as an ocular witness of

the occurrence in question. Therefore, the testimony of P.W. 2 is fit to be brushed aside in the facts and circumstances of this case as an ocular

witness of the occurrence P.W. 7, Sumati Bera, the daughter of the deceased, has deposed that at about 6.30 hours on the day of the occurrence

she was near the pond and she saw all the appellants armed with Tangi and spade coming out from the bush and appellant Jai Hari Bera assaulted

the deceased on his neck and other two appellants also assaulted him by the weapons with which they were armed with and in course of the

assault the entire neck of the deceased was severed. She has further deposed that appellant Jai Hari Bera fled away with the chopped off head of

the deceased and P.W. 5, Sitaram Bera and P.W. 1, Sampat Bera raised alarms on which the villagers came there. It is pertinent to mention here

that the Fard beyan (Ext. 1) as well as the testimony of P.W. 1 and P.W. 2 does not whisper regarding the presence of P.W. 7 at the place of

occurrence at the relevant time. In para 5 she has also deposed to have raised alarms but P.W. 1 and P.W. 2 have not come to the place of

occurrence rather her mother and grand parents had come to the place of occurrence and thereby she excludes the presence of P.W. 1 and P.W.

2 at the place of occurrence at the relevant time. On critical analysis of the evidence of P.W. 1 and P.W. 2 read with P.W. 7 it transpires that

P.W. 7 cannot be an ocular witness of the occurrence in question. And to crown all P.W. 7 has deposed in the most clear and unequivocal terms

in the concluding portion of para 6 of her testimony that the I.O. was at her house for one to two hours in course of investigation on the day of the

occurrence and it was deliberated upon and decided that who will appear as a witness as well as what they will depose in support of the

prosecution case. This evidence of P.W. 7 gives an inkling of the fact that none of alleged eye witnesses had any occasion to witness the

occurrence and the possibility of the false implication of the appellants in this case cannot be totally ruled out in view of the enmity existing and alive

between the parties. The finding of the learned Court below regarding the competency of P.W. 7 as an ocular witness of the occurrence worthy of

credit appears to be palpably incorrect and the ratio of the case reported in Rana Partap and Others Vs. State of Haryana, has no application in

this case. In view of the critical analysis and scrutiny of the evidence of the prosecution witnesses referred to above with due care and caution it

appears that there is no ring of truth in their evidence. The material contradictions and inconsistencies appearing in the evidence of P.W. 5, P.W. 1,

P.W. 2 and P.W. 7 regarding their presence at the place of occurrence at the relevant time equally casts a cloud of suspicion to the very warp and

woof of the prosecution case. And last but not the least, the Fard bayan and F.I.R. have been received in the Court empowered to take

cognizance on 24-4-1996 when the Fard bayan was recorded on 22-4-1996 at 8.20 hours. There is suspicious circumstance surrounding the

authenticity of the Fard bayan which is established as per the evidence of P.W. 7 in which she has categorically stated that it was deliberated upon

and decided with the I.O. as to who will figure as a witness and what they will tell regarding the occurrence. No explanation is forthcoming on the

record as to why the Fard bayan and F.I.R. of this case were not sent to the Court empowered to take cognizance forthwith. This aspect of the

matter is a circumstance which provides a basis to raise suspicion that the Fard bayan of P.W. 2, the informant is the result of consultation and

deliberations and it may have been recorded much later than the date and time mentioned in it and at the same time he discloses that the

investigation is not fair and forthright. Therefore, the defence version, in the facts and circumstances of this case, regarding their false implication

due to the enmity existing and alive appears to be natural and probable. The learned Court below did not meticulously consider the evidence on the

record in proper perspective and has gravely erred in coming to the finding of the guilt of the appellants. Viewed thus, the impugned judgment

suffers with illegality and is unsustainable.

13. There is merit in the appeal and it succeeds. The appeal is hereby allowed. The impugned judgment is hereby set aside. The appellants are not

found guilty of the charges levelled against them and, they are, accordingly, acquitted. Appellants, Mochi Bera and Satyanarayan Bera are hereby

discharged from the liabilities of their bail bonds. Appellant, Jai Hari Bera is ordered to be set free forthwith from the custody, if not wanted in any

other case.

Lakshan Uraon, J.

14. I agreed.