
Sudama Rai Vs The State of Bihar

Criminal Appeal (DB) No. 101 of 1989

Court: Patna High Court

Date of Decision: May 23, 2013

Acts Referred:

Penal Code, 1860 (IPC) " Section 147, 148, 149, 302, 304

Hon'ble Judges: Mihir Kumar Jha, J; Aditya Kumar Trivedi, J

Bench: Division Bench

Advocate: Surendra Singh, Mr. Rana Pratap Singh, Mr. Akhileshwar Pd. Singh, Adv, Mrs. Anita Kumar Singh and Mr. Aaruni Singh, for the Appellant; Shashi Bala Verma, APP, for the Respondent

Final Decision: Dismissed

Judgement

Mihir Kumar Jha, J.

All these appeals arise out of a common judgment dated 28.2.1989 passed by the 5th Additional Sessions Judge,

Arrah in Sessions Trial No. 52 of 1987 whereby and whereunder while appellant Umesh Rai has been convicted for offence u/s 302 of the Indian

Penal Code (IPC), rest of the appellants Sudama Rai, Baidyanath Rai, Kamlesh Rai and Ramesh Rai have been convicted for offence u/s 302/149

IPC and have been sentenced to undergo rigorous imprisonment for life. The appellant Baidyanath Rai, Ramesh Rai and Kamlesh Rai have also

been convicted for offence u/s 307 IPC and have been sentenced to undergo rigorous imprisonment for five years each. Appellants Sudama Rai,

Umesh Rai, Baidyanath Rai and Ramesh Rai have also been convicted for offence u/s 148 IPC and have been sentenced to undergo rigorous

imprisonment for two years whereas appellant Kamlesh Rai has been again convicted for offence u/s 147 IPC and has been sentenced to undergo

rigorous imprisonment for one year. All the aforesaid sentences have been directed to run concurrently. The prosecution case in brief as per the

Fardbeyan of Bhuneshwar Rai (P.W. 11) recorded at Behia State Dispensary at 8.30 AM on 4.4.1986 is that in the early morning while he and

his father Radha Rai (deceased) were picking up Mahua in their field known as Dikwa Field situated in Kharauni Mahal, the appellants along with

Ramashish Rai and Bhagwan Rai as well as Awadhesh Rai soon after the rising of the sun variously armed with Bhala, Garasa, Lathi had arrived at

the place where they were picking Mahua and having abused them (informant and his father) had question their authority for picking up Mahua.

The informant is said to have reported to them by saying that both the field and the Mahua tree belongs to them for which they had necessary

documents and, therefore, they will continue to pickup the Mahua.

2. It has been alleged by the informant that on this utterance, the appellant Sudama Rai had given a Garasa blow on the father of the informant

whereas appellant Umesh Rai had given Bhala blow in the chest of his father as a result whereof, he died at the spot instantaneously. The informant

had also alleged that the appellant Bhagwan Rai had assaulted him (informant) by Bhala in his neck and he too had sustained injury. It has also

been alleged by the informant that when on hulla, his own brother Kameshwar Rai had reached at the pot and he too was assaulted by Kamlesh

Rai by Goji on his head causing open head injury while appellant Awadhesh Rai had assaulted him by Bhala on the back portion of his neck and

his brother Kameshwar Rai also fell down on account of the aforementioned injury whereafter the appellant Ramesh Rai had also assaulted him by

Bhala on his left side of his chest.

3. The informant in his Fardbeyan had named Ram Dhiraj Rai (P.W. 2), Ram Narain Pandey (P.W. 4) as witnesses to the occurrence and had

also stated that while they were in the injured condition, they were brought to the hospital on trekker by the villagers. On the aforesaid Fardbeyan

to which Ram Dular Rai (P.W. 3) and one Gopal Rai (not examined) were the attesting witness, Behia P.S. Case No. 0040 of 1986 was recorded

for offence u/s 147/148/149/302/307/324 & 323 I.P.C. against the eight persons including the appellants.

4. The Police after investigation had submitted charge-sheet and since co-accused Awadhesh Rai was found to be juvenile, his trial was separated

and rest seven persons including the five appellants and Ramashish Rai and Bhagwan Rai were put on trial leading to the impugned judgment

convicting the five appellants and acquitting Ramashish Rai and Bhagwan Rai by giving them benefit of doubt.

5. The defence of these appellants is one of complete innocence and their false implication on account of old enmity. In fact, from the trend of the

cross-examination, it would transpire that the appellants have come out with a specific case that the deceased was done to death in a separate

occurrence whereas the informant and his brother Kameshwar Rai (P.W. 9) had sustained injuries in another incident and both such incidents had

taken place at different place, different point of time and in different manner altogether, actually in the dead of night and thus even when there these

appellants were not identified all of them have been falsely implicated only on account of old enmity and grudge, primarily because they did not

agree for the part with a piece of land to enable the prosecution party to use the same as passage for their to and fro movement from their house.

The defence in fact for this purpose had also adduced certain documentary evidence to which we will refer to at an appropriate place.

6. Mr. Surendra Singh, followed by Mr. Rana Pratap Singh and Mr. Akhileshwar Prasad Singh, appearing for the appellants in these four appeals

have assailed the impugned judgment on a number of grounds. Mr. Surendra Singh learned Senior Counsel who has mainly made the submissions

for its being adopted by the other Senior Counsels appearing for different sets of appellants had basically concentrated on the aspect that in

absence of definite opinion of the doctor conducting postmortem on the person of the deceased as with regard to any of the specific injury being

the cause of death, the charge u/s 302 or 302/49 I.P.C. was not substantiated much less established. According to Mr. Singh, in view of above

discrepancy in medical evidence if the individual allegations of assault against the appellants as per prosecution case was accepted in toto, the same

at best would make out a case u/s 304 Part-2 IPC against the appellant Umesh Rai and u/s 326/149 IPC against rest of the appellants except

Kamlesh Rai whose conviction in view of simple injury could be only u/s 324 IPC.

7. Mr. Singh had also submitted that as a matter of fact, no reliance could be placed on the two injured witnesses, namely, P.W. 9 and P.W. 11

because the doctor who had examined them at Ara after their first aid treatment a Behea State Dispensary has not been examined and in fact, the

prosecution has done no service to itself even by explaining as to whether they were even admitted in the hospital at Arrah. In the same vein, Mr.

Singh has also submitted that the two witnesses claimed in the First Information Report as eyewitnesses have also not fully supported the

prosecution case and in fact one of them, namely, Ram Narain Pandey sought to be an eyewitness in the First Information Report has deposed

only as a hearsay witness.

8. Yet another important plank of the submission of Mr. Singh is that there is complete want of evidence to show that there was any common

object for the unlawful assembly and in absence thereof, the conviction and sentence of the appellants as a member of unlawful assembly cannot be

sustained. He has also gone to question the genesis of the prosecution case as with regard to the Mahua crop and its dispute leading to the

occurrence in question as alleged by the prosecution.

9. Per contra, Ms Sashibala Verma, learned APP appearing on behalf of the State, while supporting the impugned judgment, has submitted that a

bare perusal of the postmortem report and the evidence of the doctor P.W. 7 will leave nothing for speculation that it was the fatal Bhala injury

given by the appellant Umesh Rai in the chest of the deceased which was found to be the cause of death. She has also explained that the genesis as

with regard to the picking up Mahua crop in the field and the tree belonging to the prosecution has been successfully proven and in fact the

documents brought by way of defence exhibit by the appellants give no semblance of their right on the disputed land and Mahua tree.

10. She has also referred to the evidence of the witnesses to substantiate that all the appellants with three others had formed an unlawful assembly

and having arrived at the place of occurrence had indiscriminately assaulted on the three unarmed persons, namely, the deceased and his two sons

P.W. 9 and P.W. 11 which by itself would go to show that the offence of murder was committed in a pre-planned manner. Proceeding further, she

has also explained that there is no material contradiction in the evidence of the prosecution witnesses and specially when the prosecution has

adduced the evidence of two injured witnesses, its case cannot be prejudiced only because of some minor discrepancy in the evidence of one of

the two eyewitnesses named in the First Information Report.

11. Before we would advert to the aforesaid submissions, it would be necessary for us to have a brief survey of the evidence on record. The

prosecution had examined in all thirteen witnesses out of whom Samhut Rai (P.W. 1), Ram Dhiraj Rai (P.W. 2), Kameshwar Rai (P.W. 9) and

Bhuneshwar Rai (P.W. 11) have deposed as eyewitnesses. Ram Dular Rai (P.W. 3), Ram Narain Pandey (P.W. 4), Dhaneshri Devi (P.W. 5),

Kanhaiya Ram (P.W. 6) and Sheodani Singh (P.W. 10) have supported some part of the occurrence mostly as hearsay witnesses. Dr. R.K. Singh

(P.W. 7) and Dr. Gorak Nath (P.W. 8) are the two doctors and while the former has proved the postmortem report, the latter has proven the

injury report of both the P.W. 9 & P.W. 11. Sukeshwar Sharma (P.W. 12) is the Investigating Officer who had conducted investigation and

submitted the charge-sheet and P.W. 13 Tung Nath Prasad is a formal witness who has only proved certain documents relating to the field of

Mahua belonging to the prosecution party.

12. The prosecution has also led documentary evidence by proving thirteen exhibits out of whom Exbt.-1 Series is the signature of the witnesses

over respective documents, Exbt.-2 is the sketch map, Exbt.-3 is the postmortem report, Exbt.-4 Series are the injury reports of P.W. 9 & P.W.

11, Exbt.-5 is the Fardbeyan and Exbt.-6 is the formal F.I.R., Exbt.-7 Series are the requisition, Exbt.-8 is the inquest report, Exbt.-9 is the

seizure list, Exbt.-10 is the land receipt, Exbt.-11 Series are the respective sale deed, Exbt.-12 is the entry of the Chak Khatiyan, Exbt.-13 is the

certain map of the order of Case No. 97/9/98 passed by the Consolidation Court.

13. It has to be noted that though the defence has not examined any defence witness but it has exhibited village map as Exbt.-A and the certified

copy of Khatian of plot no. 817, 818, 819 standing in the name of Ramashish Rai as Exbt.-B and certified copy of Khatian of plot no. 816,

Khata no. 139 as Exbt.-B/1.

14. In order to appreciate the core of the submission of Mr. Singh learned Senior Counsel for appellant that no charge u/s 302 IPC can be made

out in absence of the conclusive opinion of the doctor conducting postmortem as with regard to which all the injuries was fatal, it would be

necessary for us to reproduce the postmortem report which reads as follows:-

External Examination:- Mouth and eyes found shut, injuries found were as follows.

(1) One sharp puncture wound with broader base and narrow apex of size $\frac{3}{4}'' \times \frac{1}{2}'' \times \frac{1}{2}''$ deep over right of chest in middle part of sternum left

to its edge. The wound commensurate to the chest cavity.

(2) One sharp wound on scalp at of rt. Parietal in anterior part $3'' \times \frac{1}{2}'' \times$ Skull deep

(3) One lacerated wound on scalp over left parietal in upper part $3 \frac{1}{2}'' \times \frac{3}{4}'' \times$ skull deep

(4) One lacerated wound over scalp on rt. Parietal in upper and posterior part $3 \frac{1}{2}'' \times \frac{3}{4}'' \times$ Skin deep.

(5) One sharp wound with broad base and narrow apex over abdomen in umbilical region, left to midline $\frac{3}{4}'' \times \frac{1}{2}'' \times$ skin deep

Internal Examination-

Chest - Mediastinum--- full of dark clotted blood. Rs. Atrium punctured $\frac{1}{2}''$ area with laceration of vessels, other chambers of heart found

empty. Both lungs intact and slightly congested.

Abd- Stomach found empty and contained very little digested rice.

Liver found pale.

Spleen congested, Kidney pale, Bladder empty. Brain - found slightly congested.

All the injuries were ante mortem in nature caused by (1) and (5) by sharp pointed weapon, (2) by sharp weapon and No. (3) and (4) by hard and

blunt substance.

Cause of death - Death has resulted from injury to the vital internal organ like heart by sharp pointed weapon. Time elapsed since death is

approximately between 12 to 18 hours.

(underlining for emphasis)

15. The underlined portion of the cause of death in fact has become the main basis for Mr. Singh to contend that as the doctor had not opined as

to which of the five injuries was specifically the cause of death, the offence u/s 302 IPC cannot be said to have been made out.

16. Attractive though the aforesaid the submissions may be but a bit of penetration will automatically expose its hollowness. As noted above, the

doctor while describing the cause of death in the postmortem report has given a definite opinion that it was the injury to the vital internal organ like

heart by a sharp pointed weapon which became the cause of death. That injury is referable to no other injury but injury no. 1 namely;

one sharp puncture wound with broader base and narrow apex of size 3/4""X1/2""X2 1/2"" deep over rout of chest in middle part of sternum left to

its edge. The wound commensurate to the chest cavity.

17. Any doubt whatsoever as could have been entertained by us gets immediately clarified from the deposition of the doctor (P.W. 7) who had

conducted the postmortem, inasmuch as, in his examination in chief, he had specifically stated before the court that:-

Death resulted from injury no. 1 to the vital organ like heart by sharp pointed weapon.

18. It has to be kept in mind that this doctor was cross-examined on all the aspects relating to injury but not a word was said about the injury no. 1

which was described by the doctor in his examination-in-chief to be the cause of death. In view of the above, this Court would find no merit in the

submission of Mr. Singh that the cause of death of the deceased having been not proven by the prosecution in the light of the medical evidence, the

charge u/s 302 IPC was found to fail. Consequently this Court would also find no application of the judgment of the Apex Court in the case of

Chilamakur Nagireddy and Others Vs. State of Andhra Pradesh, heavily relied by him inasmuch as but its paragraph nos. 4 & 5 will go to show

that whatever injuries were found on the deceased of that case could not be specifically related to the doctor's opinion who had merely described

shock due to fracture of temporal skull bone, injury to descending aorta, injury to liver and large intestines ascending colon and hemorrhage to be

the cause of death. Such is not the case in hand as has been noted above from a detailed analysis of the postmortem report and the evidence of

doctor P.W. 7.

19. Reliance has also been placed by him on the judgment of the Apex Court in the case of Bunnilal Chaudhary Vs. State of Bihar, . From

paragraph no. 10 of the judgment, it would, however, be clear that the chest injury of 1""X1/2"" penetrating wound on the deceased of that case was

not opined to be the injury to be sufficient in the ordinary course of nature to cause his death and in fact, that could also not be stated to be likely to

cause his death. It was in this background that the Apex Court in paragraph no. 11 of the aforesaid judgment had clarified the position in law as

with regard to the requirement of fatal injury must be in ordinary course of nature to cause death. We would however fail to appreciate as to how

in the present case, in view of the definite opinion of the doctor as noted above, the ratio of Bunnilal Chaudhary (supra) can be made applicable.

20. Finally, the reference made by Mr. Singh on the judgment of the Apex Court in the case of AIR 1983 185 (SC) is also clearly distinguishable

on fact. In a short judgment of the four paragraphs what has really been held by the Apex Court therein is that it was a case of single injury where

the appellant had thrust the prongs of the jelli into the Ran Singh's chest and that when the Chhura was withdrawn, Ram Singh fell down and had

died. As a matter of fact, paragraph no. 3 of the judgment would make it clear that the Apex Court proceeding on the basis of single injury and

taking into account the aspect that the assault had taken place in the heats of altercation between Ran Singh on the one hand and the appellant and

his comrades on the other, had it was held that there was no intention to kill Ram Singh. The fact of the present case, however, where the

deceased had five injuries not only in his chest but also three other injuries on his head and on his abdomen in umbilical region, cannot be

comparable with the facts of the case of Hari Ram (supra).

21. It is not that we are satisfied only on the basis of medical evidence that the offence u/s 302 IPC was made out against the appellants but in fact

we have also carefully perused the evidence of the two injured eye witnesses who in the circumstances are the best evidence for the prosecution. It

has to be kept in mind that the prosecution case as with regard to the altercation taking place in or around 6 to 6.30 a.m. in the morning after the

sun rise was reported to the police at 8.30 a.m. i.e. within two hours at Behia State Dispensary and the fact that the First Information Report was

immediately registered and the same was also received in the court on the same day would leave little for any one to even suggest of fabrication of

the injuries on P.W. 9 and P.W. 11. The fact that the injuries on P.W. 9 and P.W. 11 were examined by the doctor P.W. 8 at 7.30 a.m. and 8

a.m. on 4.4.1986 respectively even before arrival of the police and recording of the Fardbeyan at 8.30 a.m. by themselves would go to show that

the two injured witnesses P.W. 9 and P.W. 11 had sustained fresh injuries. In this regard, it would be found that while examining the injuries on

P.W. 11, the doctor P.W. 8 had recorded as follows:-

9(1) One stab injury measuring $1\frac{1}{2}'' \times 1\frac{1}{2}'' \times 3\frac{3}{4}''$ obliquely upward in direction in front of neck below the mid cartilage having minute blood in its

sputum. It was caused by sharp pointed weapon such as Bhala. The injured was referred to Arrah Sadar hospital. The opinion in regard to injury

was reserved Age of injury within 2 hours.

22. The nature of aforesaid injury thus found on the person of informant P.W. 11 that too within two hours in his neck as also clearly stated by him

in his Fardbeyan cannot be said to be manufactured injury only for P.W. 11 to become an eyewitness.

23. Similarly, when P.W. 9 was also examined at 8 a.m. on 4.4.1986 and the doctor had found the following injuries on his person:-

(1) One stab wound measuring $1\frac{1}{2}'' \times 1\frac{1}{2}'' \times 3\frac{3}{4}''$ on left side chest below nipple having severe pain in his chest.

(ii) One stab wound measuring $1\frac{1}{2}'' \times 1\frac{1}{2}'' \times 1\frac{1}{2}''$ on back of neck

(iii) One lacerated wound measuring $1\frac{1}{2}'' \times 1\frac{1}{2}'' \times$ skin deep on left parietal region of the head.

(iv) One swelling with reddish bruise measuring $3'' \times 4''$ on the left forearm.

2. Injuries no. (iii) & (iv) were caused by hard blunt substance such as lathi. Injuries no. (1) & (2) were caused by sharp pointed weapon such as

spear (bhala).

3. The injured was referred to Arrah Sadar hospital. The opinion in regard to nature was reserved-.

cannot be said to be manufactured while criticizing the status of P.W. 9 as an injured eyewitness to the occurrence.

24. In view of the injuries found by the doctor P.W. 8 on both P.W. 9 and P.W. 11, this Court is not at all impressed with the criticism made by

Mr. Singh learned Senior Counsel that the doctor of Ara where the two injured were referred for their further treatment has not been examined. In

fact, when PW8, the doctor of Bihea State Dispensary was also cross-examined on this aspect and had explained that he had referred P.W. 11

for finding out as to whether there was any damage in wind pipe on account of his injury in the neck portion and P.W. 9 to ascertain the impact of

injury in his chest affecting his lung, it cannot be said that they were carrying manufactured injuries only for their becoming eyewitnesses.

25. The defence in fact having also put a specific question as with regard to the weapon used for causing the injuries on the person of the P.W. 9

and P.W. 11 cannot now challenge such injuries specially P.W. 8 the doctor in reply in course of his cross examination had specifically stated that

such injuries could be caused only by sharp pointed weapon i.e. spear, Bhala or even Chhura. It is in this background that one has to view the

evidence of both the injured witness.

26. P.W. 11 the informant while supporting his earliest version in the Fardbeyan had stated that the occurrence had taken place at the time of rising

of the sun when he along with his father were picking Mahua in his field. He has also supported the arrival of the unlawful assembly and challenging

both of them i.e. P.W. 11 and his father as with regard to picking of Mahua. He had also stated when they had resisted such challenge by referring

to the documents in their possession, they were indiscriminately assaulted. He had also given details of the assailant of his father, the deceased as

also on his brother P.W. 9 which fully tally with the medical evidence.

27. As with regard to his claim of land and the Mahua tree standing thereon, he had disclosed that he had initially purchased the part of land in

1965 and thereafter had subsequently also purchased the share of the accused persons in 1973 and since then he along with his family members

were continuing with the peaceful possession of the same. The defence while cross examining P.W. 11 could not impeach his such direct evidence

in examination-in-chief and in fact, from perusal of paragraph no. 20 of the evidence of P.W. 11, it would be absolutely clear that he had also

claimed that he had been picking up Mahua not only on the day of occurrence but even from last three days earlier, which by itself would go to

show that they were not unauthorizedly picking up Mahua.

28. The defence could also not dislodge P.W. 11 on the point of manner of occurrence as would be evident from reading of his evidence in

paragraph no. 23 and 25. This P.W. 11 in fact was cross-examined on two consecutive days but the defence even did not dare to cross-examine

him either with regard to the manner of occurrence or the weapons used during course of such occurrence. In fact, from paragraph nos. 46 of the

cross-examination of P.W. 11, this Court would find an admission on the part of the appellants by way of suggestion to him regarding the presence

of injuries over the person of prosecution party, inasmuch as, it was said that they (P.W. 11 P.W. 9 and the deceased) had sustained such injuries

when there was darkness and the accused persons were falsely implicated due to dispute relating to thoroughfare of the road connecting their land.

29. Similarly the other injured witness, P.W. 9, has also fully supported the prosecution case. In his examination-in-chief, he had categorically

stated that the occurrence had taken place at about 6.30 a.m. and when he had seen the appellants variously armed rushing towards the Mahua

tree, he had also gone to Mahua tree where he had seen his father and brother (P.W. 11) picking Mahua. He has also given full description of the

manner of occurrence on his father as also his brother (P.W. 11) as also on himself.

30. In cross examination, P.W. 9 had not only withstood the test of a reliable witness but in fact he had also given location of his Khalihan from

where he had rushed to the field of Mahua having Mahua tree. Surprisingly, even this witness was not cross-examined on the factum of occurrence

and except for some minor contradiction in his evidence in paragraph nos. 25 & 26, there is nothing which can takeaway his being an eyewitness

to the occurrence. Surprisingly to him also, same suggestion was given by the defence that his father Radha Rai (deceased) was done to death by

someone else in the dead of night when no one had witnessed the assailant and the false implication of the appellants was only on account of the

dispute relating to passage. What however makes his evidence compact and believable is that he has not been even cross-examined as with regard

to the manner of occurrence or the injury sustained by him or his brother (P.W. 11).

31. Thus from reading of the evidence of the two injured eyewitnesses i.e. P.W. 9 and P.W. 11, it becomes absolutely clear that the defence had

virtually conceded to either the genesis of the occurrence or the manner of occurrence, inasmuch as, the only plea of defence in this regard was that

such occurrence had taken place in the dead of night in darkness and none had identified the assailant of the deceased. As a matter of fact, if a

suggestion was given to both the injured eyewitnesses by the defence with regard to injury sustained by them it becomes clear that the case of the

prosecution either with regard to genesis or place of occurrence or manner of occurrence was virtually admitted by the defence.

32. Having regard to our aforesaid findings that the prosecution has been able to establish its case also through oral evidence of its two injured

eyewitnesses, there would be little left for the learned counsel for the appellants to contend that the oral evidence as a whole lacks credibility. The

submission of Mr. Singh that both P.W. 9 and P.W. 11 the two brothers, being the son of the deceased, were interested witnesses and as such,

could not be relied without independent corroboration has to be also noted for its being rejected. The Apex Court as with regard to the status of

injured witnesses has consistently held that merely because they are the family members and the relatives of the deceased, their evidence cannot be

altogether discarded. Reference in this connection may be usefully made to the judgment of the Apex Court in the case of in the case of Bhajan

Singh @ Harbhajan Singh and Others Vs. State of Haryana, wherein it was held as follows:-

21. The evidence of the stamped witness must be given due weightage as his presence on the place of occurrence cannot be doubted. His

statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone

else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this

lends support to his testimony that he was present at the time of occurrence. Thus, the testimony of an injured witness is accorded a special status

in law. Such a witness comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in

order to falsely implicate someone. ""Convincing evidence is required to discredit an injured witness"". Thus, the evidence of an injured witness

should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein.

(Vide: Abdul Sayeed Vs. State of Madhya Pradesh, ; Kailas and Others Vs. State of Maharashtra T.R. Taluka P.S., ; Durbal Vs. State of U.P., ;

and State of U.P. Vs. Naresh and Others,).

33. The same view was in fact also reiterated in a recent judgment of the Apex Court in the case of Mano Dutt and Another Vs. State of U.P.,

wherein it was held as follows:-

30.....Normally, an injured witness would enjoy greater credibility because he is the sufferer himself and thus, there will be no occasion for such a

person to state an incorrect version of the occurrence, or to involve anybody falsely and in the bargain protect the real culprit. We need not discuss

more elaborately the weightage that should be attached by the Court to the testimony of an injured witness. In fact, this aspect of criminal

jurisprudence is no more res integra, as has been consistently stated by this Court in uniform language.

31. We may merely refer to Abdul Sayeed Vs. State of Madhya Pradesh, where this Court held as under: (SCC pp. 271-72, paras 28-30)

28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been

extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is

generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is

unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness."

[Vide Ramlogan Singh and Others Vs. State of Bihar,], Malkhan Singh and Another Vs. State of U.P., , Machhi Singh and Others Vs. State of

Punjab, , Appabhai and Another Vs. State of Gujarat, , Bonkya Alias Bharat Shivaji Mane and others Vs. State of Maharashtra, , Bhag Singh and

Others Vs. State of Punjab, , Mohar and Another Vs. State of U.P., , Dinesh Kumar Vs. State of Rajasthan, , Vishnu v. State of Rajasthan[

(2009) 10 SCC 477], Anna Reddy Sambasiva Reddy and Others Vs. State of Andhra Pradesh, and Balraje @ Trimbak Vs. State of Maharashtra,

29. While deciding this issue, a similar view was taken in Jarnail Singh and Others Vs. State of Punjab, where this Court reiterated the special

evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-

29)

28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had

given full details of the incident as he was present at the time when the assailants reached the tubewell. In Shivalingappa Kallayanappa v. State of

Karnataka this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his

evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is

proved that he suffered the injury during the said incident.

29. In State of U.P. Vs. Kishan Chand and Others, a similar view has been reiterated observing that the testimony of a stamped witness has its

own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he

was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his

testimony, it should be relied upon (vide Krishan v. State of Haryana[(2006) 12 SCC 459]. Thus, we are of the considered opinion that evidence

of Darshan Singh (PW 4) has rightly been relied upon by the courts below.

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a

consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will

not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of

the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and

discrepancies therein.

To the similar effect is the judgment of this Court in Balraje @ Trimbak Vs. State of Maharashtra, .

34. It would be also very important to note here that if the evidence of P.W. 9 and P.W. 11 is to be believed, which must be believed in the

backdrop of the discussions made above, the submission of Mr. Singh that there was no unlawful assembly with a common object is automatically

demolished. It is the case of the prosecution fully supported from the evidence of P.W. 9 and P.W. 11 that all the eight members including the five

appellants being armed with deadly weapons had arrived at the place of occurrence and having challenged the informant and his father as with

regard to the picking up Mahua, they had launched in an indiscriminate assault when the informant had sought to justify their action of picking of

Mahua in view of being the owner of land and tree. It is not the case of the prosecution that only appellant Umesh Rai alone had come forward to

assault the deceased while rest of the appellants had remained stationed rather the manner of assault given in the First Information Report and also

substantiated in course of evidence in court of P.W. 9 and P.W. 11 will go to show that each appellant had contributed in the assault. In a case like

this where eight persons would encircle one person and someone will assault on head, the other on the chest and someone in the abdomen, it

cannot be said that there was no unlawful assembly for the common object of killing a person.

35. In view of the above, there will be no difficulty for us to hold that the reliance placed by Mr. Singh on the judgment of the Apex Court in the

case of Shambhu Nath Singh and Others Vs. State of Bihar, will have no application to the fact of the present case. As a matter of fact, the law

was stated in paragraph no. 6 of the judgment wherein it was held that Section 149 of the IPC is declaratory of the vicarious liability of the

members of an unlawful assembly for acts done in prosecution of the common object of that assembly or for such offences as the members of the

unlawful assembly knew to be likely to be committed in prosecution of that object.

36. The aspect, however, which was sought to be highlighted by Mr. Singh from this judgment of Apex Court in the case of Shambhu Nath Singh

(supra) was that the members of unlawful assembly may have a commonality of object up to a certain point, beyond which they may differ in their

objects, and the knowledge possessed by each member of what is likely to be committed in prosecution of their common object may vary not only

according to the information at his command, but also according to the extent to which he shares the commonality of object and as a consequence

of this the effect of Section 149 of the IPC may be different on different members of the same unlawful assembly.

37. In the present case however the aforesaid theory cannot be made applicable, inasmuch as when blow on head and in the abdomen by Garasa

apart from piercing Bhala injury was given on the person of the deceased by three persons of that unlawful assembly, it cannot be remotely

suggested that the common object of the unlawful assembly was to only cause grievous hurt. The facts of the case of Shambhu Nath Singh (supra)

was in fact entirely different to the facts of the present case.

38. This Court in all fairness would also take notice of reliance placed by Mr. Singh learned Senior Counsel for the appellants on the judgment of

the Apex Court in the case of Bharwad Jakshibhai Nagjibhai and others Vs. State of Gujarat, wherein the Apex Court while dealing in with the

facts of that case in paragraph no. 14 and having recorded a findings that seven accused/appellants were members of an unlawful assembly which

caused injuries to three members of the Patel Community had gone to examine as to whether the common object of that unlawful assembly was to

cause grievous hurt and not to commit murder. From paragraph no. 19 of the aforesaid judgment, it would be clear that it was a mob of 50 to 60

persons in which no common object could be found. As a matter of fact, in paragraph no. 20, the Apex Court had also taken into consideration

that most of the members of the assembly only carried ordinary sticks. Such is not facts of the present case where every member was actually

carrying either a Garasa, Bhala or Lathi and in fact, out of five appellants, three of them namely Suresh Rai was armed with Garasa while Umesh

Rai and Baidhnath Rai were armed with Bhala. Obviously the facts of the case of Bharwad Jakshibhai Nagjibhai (supra) is clearly distinguishable.

39. The further reliance placed by Mr. Singh, learned Senior Counsel for the appellants on the judgment of the Apex Court in the case of Radha

Mohan Singh @ Lal Saheb and Others Vs. State of U.P., seems to be also wholly misplaced, inasmuch as, from paragraph no. 19 thereof it would

be clear that the injuries given by Radha Mohan Singh and Devendra Singh who were armed with Farsa did not result into sharp cutting injury and

in fact the deceased is said to have succumbed to stab injury. It was therefore on account of peculiar fact of that case that in paragraph no. 23 of

the judgment, it was concluded that the common object of unlawful assembly was not to commit murder of the deceased nor that the members of

the unlawful assembly knew that murder is likely to be committed in prosecution of the common object of the assembly.

40. In the considered opinion of this Court, the facts of the present case being absolutely different where each and every member having

surrounded the deceased after challenging the picking of Mahua by the informant P.W. 11 and his father, the deceased had been indiscriminately

assaulted by three persons. It is therefore very much clear that the appellants having formed the unlawful assembly had gone at the place of

occurrence with a premeditated mind to assault with the use of deadly weapons and were very well aware of the death being the result of such

assault. As a matter of fact, the scope of Section 149 I.P.C. was explained with full clarity by the Apex Court in the case of Mizaji and Another

Vs. The State of U.P., wherein it was held as follows:-

The first part of Section 149 IPC means that the offence committed in prosecution of the common object must be one which is committed with a

view to accomplish the common object. It is not necessary that there should be a pre-concert in the sense of a meeting of the members of the

unlawful assembly as to the common object; it is enough if it is adopted by all the members and is shared by all of them. In order that the case may

fall under the first part, the offence committed must be connected immediately with the common object of the unlawful assembly of which the

accused were members. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall u/s 149 if

it can be held that the offence was such as the members knew was likely to be committed. The expression ""know"" does not mean a mere

possibility, such as might or might not happen. Though it can be said that when an offence is committed in prosecution of the common object, it

would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object

that does not make the converse proposition true; there may be cases which would come within the second part, but not within the first. The

distinction between the two parts of Section 149, Indian Penal Code cannot be ignored or obliterated. In every case it would be an issue to be

determined whether the offence committed falls within the first part of Section 149 as explained above or it was an offence such as the members of

the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part. (AIR p. 572)

41. In the light of the aforesaid judgment of the Apex Court, there would be no difficulty in holding that in the light of the evidence on record, each

and every members of the unlawful assembly was aware of the consequence emanating from the assault made by the three persons on the

deceased, the father of the appellant while rest of them were also encircling him. It has to be noted that the manner of occurrence having been not

at all challenged by the defence, it would be difficult for the appellants to now contend that it was only the appellant Umesh Rai who could be held

guilty for offence u/s 302 or 304 Part-II IPC.

42. That would bring us to the next question as with regard to the culpability of the appellants for offence u/s 302 or 302/149 IPC. In the present

case, the motive for the crime has been established. There was previous litigation pending between the appellants and the prosecution party. The

enmity between the deceased and the appellants also stands proved. All the appellants were armed with deadly weapons, inasmuch as, three of

them were armed with Bhala and Garasa and two of them with Lathi. It has come also in the evidence of P.W. 9 that on an order given by

Bhagwan Rai, the deceased was given the Garasa blow on his head and Bhala injury in his chest as also in his abdomen. Thus, the attack by the

accused party on the deceased was preplanned and premeditated. The evidence of the doctor as discussed above has clearly shown that the

piercing blow of the Bhala had caused rupture in the heart. In view of all these, it would be difficult to hold that the appellants being the members of

the unlawful assembly had any other object save and except to kill the deceased. Reference in this connection may be usefully made to the

judgment of the Apex Court in the case of Surendra and Others Vs. State of U.P., wherein it was held as follows:-

13. The legal position is well established that inference of common object has to be drawn from various factors such as the weapons with which

the members were armed, their movements, the acts of violence committed by them and the result. We are satisfied that the prosecution, from the

entirety of the evidence, has been able to establish that all the members of the unlawful assembly acted in furtherance of the common object to

cause the death of Ramchandra Singh.

43. Having thus dealt with the main contention of Mr. Singh, we must advert to the some of the other ancillary issues which were also highlighted

by him in course of his argument.

44. He had submitted that non examination of the doctor at Arrah had put a dent in the prosecution case, inasmuch as, the injury received by P.W.

9 and P.W. 11 as found by the doctor at Bihea State Dispensary had remained uncorroborated. In this regard, he has also referred to the

judgment of the Apex Court reported in Pandurang, Tukia and Bhillia Vs. The State of Hyderabad, and in the case of Sarju Prasad Vs. State of

Bihar, .

45. In our considered opinion, this submission also lacks merit in view of the fact that the factum regarding injury on the person of P.W. 9 and

P.W. 11 and their being taken to Arrah for treatment has not only been stated by them in their evidence in court but in paragraph no. 44 of the

cross-examination of P.W. 11. It is infact the defence which has itself taken from the informant P.W. 11 who was the injured eyewitness that on

account of seriousness of the injury, he was referred to Arrah hospital from the Bihea State Dispensary and that he was sent to Arrah Hospital

within one hour of his being examined and treated at Behia State Dispensary.

46. This aspect of the matter in fact has also been explained by the Investigating Officer himself, P.W. 12 who has stated that on receiving of the

O.D. Slip from the Behia State Dispensary had reached over there at about 8.30 a.m. and had recorded the Fardbeyan of P.W. 11. He has also

stated that he had seen bleeding injury of P.W. 9 as also other bandaged injury of P.W. 11. In view of all these evidence on record, the non-

examination of the doctor of Arrah Sadar Hospital has not in any way made the prosecution case weak much less can discredit the evidence of

P.W. 9 and P.W. 11 in the court as injured eyewitnesses. In this regard, it is also to be noted here that the Investigating Officer P.W. 12 has more

or less supported the ocular evidence as was disclosed to him at the earliest point of time by the witnesses specially the two injured witnesses,

namely, P.W. 9 and P.W. 11 in course of investigation of the case.

47. At this place, it would be also relevant to have a brief survey of the evidence of the Investigating Officer P.W. 12 who having given his time of

arrival in the Behia State Dispensary, as also supporting the recording of the Fardbeyan of P.W. 11 over there, had also stated that after recording

of the Fardbeyan and the statement of both the P.W. 9 and P.W. 11, he had immediately gone to the place of occurrence within two hours of

recording of the Fardbeyan and had found the dead body of the deceased lying at the place of occurrence. The Investigating Officer has also

proved the inquest report and had said that he had inspected the identified place of occurrence which was belonging to Manvaran Kuar. He had

further given the details of the place of occurrence being a barren land and the Mahua tree in the east to the place where the dead body was lying

in the field of Manvaran Kuar and branches of Mahua tree were extending all around covering the field of Manvaran Kuar, Keshav Pandey as well

as the deceased himself.

48. The objective findings of the Investigating Officer of Mahua fruit fallen and scattered in huge quantity and seizure of blood stained earth, his

preparation of seizure list as also sketch map of the place of occurrence would only inspire confidence in the investigation immediately taken up by

him. The Investigating Officer though was cross-examined at length but nothing could be taken away from him so as to make out any fatal infirmity

in the prosecution case. What is however really significant to be noted here is that the Investigating Officer was not at all cross-examined over the

place of occurrence and the only piece of suggestion given to him that the dead body was found in the field of Manvaran Kuar and not in the field

of the deceased was also properly and fully explained by the Investigating Officer who had stated that Mahua tree was standing in the field of

deceased Radha Rai and its branches had spread in its surrounding covering fields of other persons including Manvaran Kuar. Thus in view of the

evidence of Investigating Officer read with the evidence of two injured witnesses, the place of occurrence also gets fully established.

49. As noted above, the manner of occurrence has been consistently supported not only by the two injured witnesses but even other witness,

namely, P.W. 1 who had given details of manner of occurrence fitting with the prosecution cases of arrival of the members of unlawful assembly,

their questioning the authority of the deceased and the informant by plucking Mahua fruits and the insistence of P.W. 11 and the deceased to keep

on continue with the picking up of the Mahua fruits leading to assault on three persons i.e. the deceased, P.W. 11 and P.W. 9. This Court infact

will have no difficulty in accepting the submission of Mr. Singh, learned counsel for the appellants that there was some exaggeration in the evidence

of P.W. 1 but then he is found to absolutely firm on the point of seizure of blood stained earth from the place of occurrence.

50. Such version of P.W. 1 also has received support from P.W. 2 who was named in the Fardbeyan as a witness and even though he had given

the details of the manner and place of occurrence fitting with the prosecution story, he was not cross-examined by the defence on the manner of

occurrence. Thus, P.W. 2 also has fully supported the assault by the appellants and others and the place and manner of occurrence has been fully

supported by him as well.

51. P.W. 3 is a hearsay witness and has disclosed with regard to the presence of blood in the field of Manvaran Kuar where the dead body of the

deceased Radha Rai was also found. In the cross-examination the P.W. 3 had also supported the motive for the occurrence being the Mahua tree

in which the accused were claiming their interest.

52. An important limb of the submission of Mr. Singh learned Senior Counsel for the appellants was that P.W. 4 who was named in the First

Information Report as a eyewitness had turned to be actually hearsay witness and on the basis of this, he had tried to explain that the informant had

not given true version of the occurrence and had named such persons including P.W. 4 who were not eyewitness. It is true that P.W. 11 in his

Fardbeyan had named P.W. 4 along with P.W. 2 and P.W. 1 to be the witnesses but merely because P.W. 4 did not claim to be eyewitness to the

main occurrence that by itself would not discredit the entire prosecution case, inasmuch as, he had stated in evidence in the court that when he had

rushed to the place of occurrence, he had seen co-accused Ramashish Rai and appellant Kamlesh Rai armed with Lathi as well as appellants

Sudama Rai armed with Garasa, Umesh Rai, Baijnath Rai, Awadhesh Rai, Ramesh Rai armed with Bhala. He had also clearly stated about the

injury on the person of P.W. 9 and P.W. 11 as also to have seen the dead body of the deceased at the place of occurrence. Thus no part of the

evidence of P.W. 4, even in capacity of hearsay witness, would demolish the prosecution case.

53. P.W. 5 had only deposed as hearsay witness and had claimed that when she being a lady, had seen the appellants and others variously armed

encircling P.W. 11 and the deceased and as such, had ran way out of fear.

54. P.W. 6 another hearsay witness had also claimed to have seen the accused persons fleeing away after assaulting the deceased, P.W. 9 and

P.W. 11.

55. Thus, in the backdrop of the entire aforesaid ocular evidence, we have no hesitation in coming to a conclusion that the prosecution case has

been fully supported by the two injured eyewitnesses which has also received independent corroboration from P.W. 2.

56. As with regard to the remaining submission of the learned counsel for the appellants concerning the motive, it has to be kept in mind that

presence of Mahua tree over the land belonging to the prosecution party has not been denied by the appellants and in fact they have come out with

a different case relating to providing space for a passage on account of which they claimed to have falsely implicated.

57. As noted above, the appellants have not questioned the place of occurrence and when their entire effort was only to make the filed of

Manvaran Kuar to be the place of occurrence on which the branches of Mahua tree found to have been extended, nothing can be said to have

been taken away as with regard to there being any other place of occurrence.

58. We have also carefully analyzed the entire evidence in the light of the deposition of eye witnesses as also hearsay witnesses in the light of the

evidence of Investigating Officer and the two doctors and have found that though there is some semblance of improvement in the oral evidence of

P.W. 1, P.W. 3 and P.W. 4 but there is still nothing to discredit the evidence of the two injured eyewitnesses, namely, P.W. 9 and P.W. 11 and

whatever has been taken by way of contradiction in respect of P.W. 9 and 11 from the Investigating Officer, they are too trivial, superficial and

having minor variations which does not adversely affect the substratum of the prosecution case. Such Discrepancy in the evidence of the witnesses

is quite natural and it does not tell upon the veracity of the entire prosecution case as has been also time and again explained by the Apex Court.

Reference in this connection may be usefully made to the judgments of the Apex Court in the case of State of U.P. Vs. M.K. Anthony, and in the

case of Rammi @ Rameshwar etc. Vs. State of Madhya Pradesh, . The same view infact was also reiterated in the case of Appabhai and Another

Vs. State of Gujarat, .

59. Thus, having giving anxious consideration to the materials on record as also the submission of the learned counsel for the parties, we have no

hesitation in holding that the prosecution has succeeded in proving its case beyond reasonable doubt against all the appellants. We, accordingly,

concur with the findings recorded by the trial court. In the result, all these four appeals are dismissed. The appellants are on bail and, therefore,

their bail bonds are hereby cancelled with a direction to them to surrender before the trial court to serve out the remaining part of the sentences.