
(1991) 02 PAT CK 0009

In the Patna High Court

Case No : Criminal Appeal No's. 454 and 468 of 1989

Anandi Mandal @ Nandlal Mandal and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 22-02-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 313
Penal Code, 1860 (IPC) — Section 148, 149, 302, 307, 324

Citation : (1991) 39 BLJR 1004 : (1991) 2 PLJR 184

Hon'ble Judges : Om Prakash, J; Bimalendu Narayan Sinha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Bimalendu Narayan Sinha, J.—Both these appeals arise out of a common judgment and order and, therefore, they have been heard together and are being disposed of by a common judgment. These two appeals are directed against the judgment and order dated 29-7-1989, passed by the 7th Additional Sessions Judge, Purnea in Sessions Trial Nos. 166 of 1985 and 267 of 1987 in which those appellants were tried on the charge of being members of an unlawful assembly for committing murder of Bishwanath Yadav and Jogendra Yadav and attempting to commit murder of Chhadi Yadav and Wakil Yadav allegedly on 16th March, 1983 at village Bhawanipur, P.O. Bhawanipur in the district of Purnea in prosecution of their common object of that unlawful assembly. All these appellants have been convicted u/s 302 read with Section 149 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and u/s 307 read with Section 149 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years each. These appellants have been found guilty u/s 148 of the Indian Penal Code. However, no separate sentence has been passed under this section. The sentences are to run concurrently.

2. The prosecution case was initiated on the basis of the fardbeyan (Ext. 4) recorded on the statement of Wakil Yadav (P.W. 9) on the 16th March, 1983 at

2.15 p. m. The prosecution case may be briefly stated. On 16th March, 1983 at about 1p.m. Wakil Yadav the first informant was returning to his house after ploughing his land. His uncle Chhedi Yadav an elder brother of his father, was also returning to his house after grazing she-buffaloes. When the first informant reached near a field of one--Bachcha Babu, he saw these five appellants along with five unknown persons sitting at the Kamat of Chhedi Mandal. Chhedi Mandal was armed with Garasa and Chandeshwari Mandal was armed with sword and Prabba Mandal was armed with bow and arrow and the remaining persons were armed with lathies. Accused, Anandi Mandal is also known as "Nandlal Mandal". Accused Chhedi Mandal, Nandlal Mandal and Kamleshwari Mandal are sons of Harihar Mandal and accused Prabhu and Chandeshwari Mandal are sons of accused Chhedi Mandal. The accused persons caught hold of the informant and started assaulting him. Accused Chandeshwari Mandal assaulted the first informant with a sword on his head and right arm and others assaulted him with lathi as a result of which the first informant fell down. Accused persons also assaulted Chhedi Yadav with their respective weapons and thereafter accused persons fled away towards south. While fleeing away, they also took with them the plough and oxen of the first informant. One Mahindra Mukhiya (not examined) informed Bishwanath Yadav the father of the first informant, and Jogendra Yadav, cousin of the first informant regarding the occurrence on which they were coming to the place of occurrence but on the way, near the field of one Prabhudayal, they were assaulted by these accused persons as a result of which they sustained injuries and died at the place of occurrence. The occurrence took place due to bad blood between the family of the first informant and the accused on account of land dispute. The first informant and Chhedi Yadav were taken to State Dispensary, Bhawanipur where Wakil Yadav came to learn about murder of his father Bishwanath Yadav and his cousin Jagendra Yadav, son of Chhedi Yadav, and on the statement of Wakil Yadav, the first informant, the fardbeyan (Ext. 4) was recorded.

3. On the basis of the fardbeyan (Ext. 4), a formal first information report was drawn and, after usual investigation, police submitted charge-sheet against ten accused persons (including these appellants) showing all of them, except accused Chhedi Mandal and Prabhu Mandal as absconders on the basis of which cognisance of the case was taken. The case of accused Chhedi Mandal, Chandeshwari Mandal and Prabhu Mandal was separated from the absconding accused and they were committed to the Court of Session giving rise to S.T. No. 166 of 1985. Subsequently, accused Nandlal Mandal and Kamleshwari Mandal could be apprehended and they were also committed to the Court of Session which gave rise to S.T. No. 265 of 1987. As both these sessions trials arose out of one and the same occurrence, they were amalgamated and were trial together.

4. At the trial, charges under Sections 302/149, 307/149, 324 and 148 of the IPC were framed against all the five accused. Charge u/s 379 of the Indian Penal Code was framed against accused Chhedi Mandal. Accused persons pleaded not guilty to the charges and claimed to be tried. Their defence, as it appears from

the cross-examination of the first informant and P.W. 2, Sahdeo Yadav, was that the first informant Wakil Yadav and other members of the prosecution party had gone to have forcible possession of the land and they assaulted mercilessly accused Prabhu Mandal and Chhedi Mandal and accused Chhedi Mandal filed a case against them and these accused have been falsely implicated and altogether a false case has been hoisted against these accused persons. In support of their defence, they filed a certified to be true copy of the F.I.R. (Ext.-4) of G.R. Case No. 445 of 1983. Accused Kamleshwari Mandal examined himself as D.W. 1 and accused Anandi Mandal examined himself as D.W. 2.

5. The prosecution examined altogether twelve witnesses. P.W. 1 Chandeshwari Yadav is a witnesses on inquest report. P.W. 2 Sahdeo Yadav P.W. 3 Upendra Yadav, P.W. 5 Pahari Yadav, P.W. 6 Fudan Sah, P.W. 8 Gulabi Yadav and P.W. 9 Wakil Yadav deposed as eye witnesses of the occurrence. P.W. 4, Birendra Yadav was tendered P.W. 7 Jogendra Yadav is a hearsay witness, P.W. 10 Dr. H.N. Singh had held post-mortem examination on the dead bodies of Bishwanath Yadav and Jogendra Yadav and P.W. 11 Dr. Ram Bahadur Rai had examined the injuries on the persons of Wakil Yadav and Chhedi Yadav., P.W. 12 S.I. Anjani Kumar is the Investigating Officer.

6. The learned trial court, after taking into consideration the evidences produced on behalf of the prosecution and the facts and circumstances of the case, found the case of prosecution fully established; but there being no specific evidence against accused Chhedi Yadav regarding charge u/s 379 of the Indian Penal Code, the trial court did not accept the accusation of theft against accused Chhedi Mandal. The trial court has not given any finding on the charge u/s 324 of the Indian Penal Code against the accused as they have been held guilty u/s 307 read with Section 149 of the Indian Penal Code.

7. The learned Counsel for the appellants has not challenged that Bishwanath Yadav and Jogendra Yadav received injuries on the alleged date of occurrence and they died as a result thereof and it is also so established on the evidence of P.Ws. 1, 2, 3, 6, 7, 8 and 9 whose evidence on this point is being corroborated by the evidence of P.Ws. 10 and 12. The evidence of P.Ws. 3, 6 and 9 is that the deceased Bishwanath Yadav and Jogendra Yadav received injuries on the alleged date of occurrence and died as a result thereof. The evidence of P.W. 12/12 Anjam Kumar, the Investigating Officer is that he held inquest over the dead bodies of the two deceased in presence of witnesses and prepared inquest reports (Ext. 6 and Ext.-6/1) in respect thereof and forwarded the dead bodies for post-mortem examination P.W. 1 Chandeshwari Yadav, P.W. 2 Sahdeo Yadav and P.W. 8 Gulabi Yadav are the witnesses on inquests.

8. The evidence of P.W. 10 Dr. H.N. Singh is that on 17th March, 1983 at 11 a.m. he held post-mortem examination on the dead body of Jogendra Yadav and found the following ante mortem injuries on his person:

(i) One cut and bone fracturing injury on the right axilla-2 "x4" communicating

with the chest cavity.

(ii) One cut injury on the mid skull from occipital to frontal bone-10 "x 1/2" up to brain substance dividing the brain into two portions with laceration of brain substance.

According to the Doctor, the death of the deceased had taken place due to these two injuries and time lapsed since death was within 36 hrs. The post-mortem report has been marked as Ext.-2.

9. On the same day and at about same time, P.W. 10 held post-mortem examination on the dead body of Bishwanath Yadav and found the following ante mortem injuries on his person:

(i) One cut and penetrating injury on right cheek-1 "x communicating with mouth cavity.

(ii) Multiple cut injuries of various sizes and shapes on the right upper limb.

(iii) One cut injury on left flank of abdomen and portions of intestine were protruding out of the abdomen 1" X communicating with abdominal cavity.

(iv) One cut and penetrating injury on left chest communicating into the chest cavity.

(v) Two cut injuries on the abdomen.

(vi) One penetrating injury on the back of hip 1" x 1 1/2" x communicating into the abdominal cavity.

(vii) One penetrating injury on the right buttock 3"x2"x2".

(viii) One cut injury on the right scapula.

On dissection, the Doctor found blood in chest cavity; and left lung and left kidney injured and punctured. According to the Doctor, the death of the deceased had taken place due to shock and haemorrhage on account of those injuries and time elapsed since death was within 36 hrs. The P.M. report has been marked as Ext.-2/1.

10. On these evidence, I find and hold that it is proved that the two deceased, namely, Bishwanath Yadav and Jogendra Yadav sustained injuries on the alleged date of occurrence and died as a result thereof.

11. But the learned Counsel for the appellants has submitted that on the evidence produced by the prosecution it is not proved beyond reasonable doubt that the two deceased sustained injuries in the manner as alleged by the prosecution.

12. The motive for the occurrence, as alleged by the prosecution, is land dispute between the accused and the family of the first informant. It appears from the evidence of the first informant (P.W. 9) that Bishwanath Yadav (the

deceased) father of the first informant purchased in 1981, 83 decimals of land bearing S.P. Nos. 2860 and 2861 appertaining to khata No. 2447 in village Bhawanipur from one Jainath Bhagat who had purchased that land from Harihar Mandal" father of the accused Chhedi Mandal; that the first informant and his family members have been growing crop on that land but accused Chhedi Mandal used to harvest the same forcibly as a result of which there had been assault between them even prior to the occurrence and that there was also a proceeding u/s 144 of the Code of Criminal Procedure (hereinafter referred to as the "Code") in which rule was made absolute against the accused and it was vacated in favour of father of the first informant. Ext. 8, the certified to be true copy of the order passed in that proceeding has been filed on behalf of the prosecution. It may be mentioned that the accused Kamleshwari Mandal examined himself as D.W. 1 and he has admitted in his evidence that his father Harihar Mandal sold the land to Jainath Bhagat and deceased Bishwanath Yadav the father of the first informant has purchased that land from Jainath Bhagat and after purchase of the land by Bishwanath Yadav (the deceased) Chhedi Mandal used to harvest forcibly the crop standing thereon. This fact of land dispute has also been mentioned by the first informant in the fardbeyan. Accused Chandeshwari Mandal and Prabhu Mandal sons of accused Chhedi Mandal, and accused Chhedi Mandal, in their statement u/s 313 of the Code, have stated that the land bearing Khesra Nos. 2860 and 2861 appertaining to khata No. 2447 belong to them. Accused Chandeshwari Mandal has further stated in his evidence that they are still in possession of the land; and accused Chandeshwari Mandal and Prabhu Mandal have admitted in their statement u/s 313 of the Code that there was a case and proceeding u/s 144 of the Code between them and deceased Bishwanath Yadav for that land. Therefore, I see no reason to disbelieve the motive, for the occurrence as alleged by the prosecution.

13. According to the prosecution case, Bishwanath Yadav (the deceased) and Jogendra Yadav (the deceased), on getting information regarding assault by the accused and their associates on the first informant Wakii Yadav and Chhedi Yadav, proceeded towards the place where those two persons were lying injured but on the way, they were assaulted by the accused and their associates as a result of which they sustained injuries and died. It may be mentioned that the evidence of the first informant (P.W. 9) is that one Mahindra Mukhiya (not examined), on seeing the first informant and his uncle Chhedi Yadav injured gave information in the village. Of course, that Mahendra Mukhiya has not been examined. The further evidence of P.W. 9 is that on being informed by Mahendra Mukhiya, his father and Yogendra were coming and when they arrived near the field of one Prabhudayal, the accused assaulted them. P.W. 9 the first informant in his evidence has stated that he learnt about the murder of his father and brother Jogendra Yadav in the Hospital, State Dispensary at Bhawanipur where Chhedi Yadav and he had been taken after being injured. P.Ws. 3 and 6 claim to be eye-witnesses on the point of assault on these two deceased. The evidence of P.W. 5 is that at the alleged time of occurrence, while he was in the field, he

heard sound of firing and thereafter he came to the canal which is close to his that field and saw these accused persons assaulting Bishwanath Yadav and Jogendra Yadav. His further evidence is that these accused persons were armed with bhala, garasa, sword, gupti and bow and arrow and that some more persons were with these accused persons at that time, but he could not identify them and after assaulting Bishwanath Yadav and Jogendra Yadav (the two deceased), the accused persons and their associates fled away towards north-west and thereafter he went near Bishwanath Yadav and Jogendra Yadav and found them dead.

14. Of course, this witness has admitted in his cross-examination that he happens to be a cousin of the first informant. But on that ground alone, his testimony cannot be rejected. There is nothing on the record to indicate that there could be any reason for this witness to depose falsely against the accused. It has been submitted by the learned Counsel for the appellants that this witness is not named in the fardbeyan as a witness to the occurrence. But it may be mentioned that the first informant had not witnessed the assault on his father and brother, the two deceased and, therefore, there is nothing unnatural if he did not name P.W. 3 as a witness who had witnessed the assault by these accused on those two deceased. Moreover, the first informant claim to know about the murder of his father and brother while he was in Hospital and he, in his fardbeyan, has mentioned that many co-villagers, besides those mentioned in the fardbeyan, had witnessed the occurrence. This witness P.W. 5 is a co-villager of the first informant. Hence, the evidence of P.W. 3 cannot be rejected merely on the ground that he is not named in the fardbeyan as a witness.

15. P.W. 6 in his evidence has stated that at the alleged time of occurrence he was in a field west of his house and he heard hulla and thereupon he along with one Kamleshwari Yadav (not examined) ran towards west and reached on the canal and saw Bishwanath Yadav and Jogendra Yadav (the two deceased) being assaulted by the five accused and 5--7 other persons. His evidence is that those accused persons and their associates were assaulting the deceased with garasa, sword, lathi and bow and arrows and they fled away towards north-west after assaulting those two persons. His further evidence is that thereafter he came back to his house and there he learnt that the accused persons had assaulted Wakil Yadav the first informant and Chhedi Yadav and they had been taken to the Hospital and thereafter he also went to the Hospital. This witness is named in the fardbeyan as a witness on the occurrence. It was suggested to this witness that he has falsely implicated the accused at the instance of Jainath Bhagat which was denied by him. It may be mentioned that this Jainath Bhagat is the vendor of Bishwanath Yadav from whom he had purchased land. This witness has admitted in his evidence that he cultivates on Batai the lands of the family of Jainath Bhagat. The witness has denied that there was litigation between Jainath Bhagat and accused Chhedi Mandal nor there is anything on the record to indicate so. Moreover, on the evidence of this witness it cannot be said that this witness is a Bataidar of Jainath Bhagat. He has only admitted that he cultivates

on Batai lands of the family of Jainath Bhagat. But even if it is accepted that he is Bataidar of Jainath Bhagat, on that ground he cannot be branded as an interested or partisan witness or as a witness inimical to the accused.

16. It has been submitted by the learned Counsel for the appellants that neither P.W. 3 nor P.W. 6 has stated in his evidence the specific weapons with which each of the accused persons was armed and the specific injuries inflicted by these accused persons on the person of the two deceased and, thus, their evidence is vague and not sufficient to warrant the conclusion that they had actually inflicted injuries which resulted in the death of the two deceased. But against none of the accused persons, charge u/s 302 of the Indian Penal Code was framed. They have been tried on the charge u/s 302 read with Section 149 of the Indian Penal Code and from the evidence of these two witnesses, it is fully established that these accused persons and their associates were members of an unlawful assembly, armed with deadly weapons and they inflicted injuries on the persons of the two deceased in prosecution of the common object of that assembly which resulted in death of the two deceased which the members of that unlawful assembly knew likely to be committed in prosecution of their common object. Of course, there is no specific evidence as to who from the members of that unlawful assembly assaulted the two deceased and inflicted injuries on their persons, but on the evidence, this much is clearly proved beyond reasonable doubt that some of the members of that unlawful assembly inflicted the injuries found on the persons of the two deceased. The evidence of P.W. 3 is that the accused were armed with bhala, garasa, sword, gupti and bow and arrows and the evidence of P.W. 6 is that accused were armed with garasa, sword, bow and arrows and lathi. The evidence of P.W. 10 Dr. H.N. Singh is that the injuries found on the persons of the two deceased could be caused by sharp cutting and sharp pointed weapon. Thus, those injuries could be caused by garasa, sword, gupti and arrows with which, according to the evidence of P.Ws. 3 and 6, the accused were armed with. Of course, the Doctor did not find any injury caused by lathi but on that ground alone, the evidence of P.W. 6 cannot be disbelieved because it appears from the evidence of these two prosecution witnesses that they were being simultaneously assaulted by the accused. In this situation, this may be difficult for a person to see as to which of those weapons exactly hit the deceased and which of them missed to hit.

17. The evidence of P.W. 12 is that he found near the field of Prabhudayal Jaduka--the place where the accused assaulted the two deceased 21 arrows, 2 bows and 2 broken lathies which he took charge of in presence of P.W. 3 Upendra Yadav and one Sumarit Yadav (not examined) and prepared seizure list. According to the evidence of P.Ws. 2, 5 and 9 the first informant, Chhedi Yadav (since dead) and the first informant were assaulted by the accused near the field of one Bachcha Babu and after assaulting Chhedi Yadav and the first informant, the accused persons fled away towards south. According to the evidence of P.W. 3, Bishwanath Yadav and Jogendra Yadav were assaulted by the accused near the field of Prabhu Jaduka. The evidence of P.W. 12 the Investigating Officer is

that he found the dead body of Bishwanath Yadav in a ditch close to the west of the field of Prabhu Jaduka and the dead body of Jogendra Yadav was found by him in the field of Prabhu Jaduka. It further appears from the evidence of P.W. 12 that to the north-west of this field of Prabhu Jaduka is the field of Bachcha Babu. Thus, the finding of P.W. 12 fully supports the prosecution case that the accused persons, after assaulting Chhedi Yadav and Wakil Yadav fled way towards south and the on way they assaulted the two deceased near the field of Prabhu Jaduka situated to the south-east of the field of Bachcha Babu.

18. Thus, on the discussion of facts and circumstances of the case and the evidences of P.Ws. 3 and 6, I find no reason to disbelieve their evidence and on their evidence it is established beyond reasonable doubt that these accused persons along with some others were members of an unlawful assembly and the injuries found on the persons of the two deceased, which resulted in their death, had been inflicted by some of the members of that unlawful assembly in prosecution of the common object of the unlawful assembly and, thus, the accused persons committed an offence punishable u/s 302 read with Section 149 of the Indian Penal Code.

19. So far the assault on Wakil Yadav (P.W. 9) the first informant and his uncle Chhedi Yadav (since dead) is concerned, there is evidence of P.W. 2 Sahdeo Yadav, P.W. 5 Pahari Yadav and P.W. 9 Wakil Yadav. The evidence of P.W. 9 is that while he was going back to his house after ploughing lands and his uncle Chhedi Yadav was also returning to his house after grazing she buualos and they reached near the field of one Bachcha Babu, he saw these five accused along with 5-6 unknown persons; and that Chhedi Mandal was armed with Garasa, Chandeshwari Mandal with sword, Prabhu Mandal with bow and arrows and the rest were armed with Lathis. His further evidence is that the accused persons and their associates caught hold of him and started assaulting him. His specific evidence is that Chandeshwari Mandal assaulted him with sword on his head and right hand and the remaining persons assaulted him with Lathi as a result of which he fell down and that Chhedi Yadav was also assaulted by the accused persons with their respective weapons. The evidence of P.W. 2 is that at the relevant time, he was irrigating the land of one Bachcha Babu and on hull a he came near the place of occurrence and saw these five accused assaulting Chhedi Yadav with Lathi, Bhala, Talwar and Garasa by the side of the road and found Wakil Yadav lying on the ground with injuries on his head. The evidence of P.W. 5 Pahari Yadav is that at the relevant time he was going back to his home after ploughing the land and when he came near the field of Bachcha Babu he saw that these accused persons along with others were assaulting Chhedi Yadav and Wakil Yadav with bhala, garasa, bow and arrow and lathi and after assaulting them, the accused persons fled away towards south. P.W. 2 and P.W. 5 corroborate the evidence of P.W. 9 Wakil Yadav. P.Ws. 2 and 5 have not specifically stated about the respective weapons which each of the accused persons was holding. Moreover, P.W. 2 has not stated that the accused persons were hitting the two injured with arrows also and similarly, P.W. 5 has not stated

that the accused were assaulting them with a sword also and P.W. 9 has not stated that any of the accused was armed with bhala also. But this discrepancy may be due to difference in their power of observation which differs from man to man and on this ground, the testimony of any of these P.Ws. cannot be disbelieved. All these three P.Ws. have named these five accused.

20. The evidence of P.W. 11 Dr. Ram Bahadur Rai is that on 16th March, 1983, while he was posted as Medical Officer In-charge, State Dispensary, Bhawanipur at 2.30 p.m. he examined Wakil Yadav (P.W. 9) and found the following injuries on his person:

(i) An incised wound 4 "x 1/2" x 1" on the head posteriorly cutting occipital bone causing profuse bleeding from brain substance.

(ii) An incised wound 3 1/2 " x" in the right hand in the right thumb web.

(iii) An incised wound on the tip of right thumb - 1/2 "x 1/2".

According to the Doctor, injury No. 1 was grievous and could be caused by the sharp edged weapon and injury Nos. 2 and 3 were simple in nature and they could be caused by sharp edged substance. The injury report has been marked as Ext. 3.

21. His further evidence is that on the same day at 2.55 p. m. he examined Chhedi Yadav (since dead) and found the following injuries on his person:-

(i) One incised wound 3" x 1" x 1" on the middle of head, fracture of parietal bone and bleeding from brain substance.

(ii) Swelling on the right forearm 1 "x 1/2" x 1/2".

According to the Doctor, injury No. 1 was grievous in nature and had been caused by sharp edged weapon and injury No. 2 had been caused by hard blunt substance. The injury report has been marked as Ext. 3/1. According to the Doctor, the injuries found on the person of both the injured were aged about six hours.

22. It has been submitted by the learned Counsel for the appellants that P.W. 2 Sahdeo Yadav, P.W. 5 Pahari Yadav and P.W. 9 Wakil Yadav do not appear to be dependable witnesses and the learned trial court ought not to have relied upon their evidence. It has been submitted that so far P.Ws. 2 and 5 are concerned, they are not named in the fardbeyan as witnesses and their evidence is not consistent with the findings of the Doctor P.W. 11 regarding injuries on the persons of Wakil Yadav and Chhedi Yadav. True it is that P.W. 2 Sahdeo Yadav and P.W. 5 Pahari Yadav are not named in the fardbeyan as eye-witnesses but the first informant in the fardbeyan has stated that his many other co-villagers had also witnessed the occurrence P.W. 2 Sahdeo Yadav and P.W. 5 Pahari Yadav are the co-villagers of the first informant. So far the assault on Wakil Yadav is concerned, P.W. 2 does not claim to have witnessed that and his evidence is that he found him lying injured. According to the evidence of P.W. 9 he was also

assaulted by lathi and so is the evidence of P.W. 5. But P.W. 11 the Doctor did not find any injury on the person of Wakil Yadav which could be caused by lathi. So far Chhedi Yadav (since dead) is concerned, according to the evidence of P.W. 2 he was assaulted by lathi, bhala, sword and garasa and according to the evidence of P. W. 5 he was assaulted by bhala. garasa, arrows and lathi. But the Doctor found only two injuries on his person of which injury No. 1 could be caused by sharp edged weapon and injury No. 2 could be caused by hard blunt substance. Of course, so far P.W. 9 is concerned, there has been enmity between his family on the one hand and the accused persons on the other hand from before the occurrence due to land dispute. But being an injured, his presence at the time of occurrence cannot be doubted. The occurrence is said to have taken place at 1 p. m. and the information was lodged at 2.15 p.m. i.e within one hour and fifteen minutes from the alleged time of occurrence. Therefore, I see no reason to disbelieve his evidence. Moreover, his evidence is being corroborated by the evidence of P.Ws. 2 and 5 in whose evidence there is nothing to indicate that there could be any reason for them to tell a lie and depose falsely against the accused. Of course, there appears exaggerations in their evidence but the prosecution story cannot be disbelieved on that ground, as has been observed by the Privi Council in *Bankim Bihari Maiti v. Shrimati Matangini Dasi* AIR 1919 PC. 157:

In Indian litigation it is not safe to assume that a case must be a false case if some of the evidence in support of it appears to be doubtful or is clearly untrue. There is on some occasions, a tendency amongst litigants in India, as elsewhere, to back up a good case by false or exaggerated evidence.

On the evidence of these P.Ws., I find and hold that the injuries found on the persons of P.W. 9 Wakil Yadav and Chhedi Yadav (since dead) has been inflicted by some of the members of the unlawful assembly of which these accused persons were also members in prosecution of their common object.

23. It has been submitted by the learned Counsel for the appellants that from the averments made in the fardbeyan, it appears that the two deceased Bishwanath Yadav and Jogendra Yadav were assaulted at the very place where the first informant and his uncle Chhedi Yadav were assaulted by the accused persons when they had come to save him and his uncle Chhedi Yadav and that the first informant had witnessed the assault on the two deceased also. But it may be mentioned that the first informant P.W. 9 has very clearly stated in his evidence that he had not witnessed the assault on his father and cousin Jogendra Yadav; and that in the State Dispensary he came to learn that his father Bisbwanth Yadav and his cousin Jogendra Yadav had been done to death by the accused persons. P.W. 9 was not cross-examined on this point and his attention was not drawn to any statement to the contrary in the fardbeyan. The first informant in his statement in the fardbeyan has, no doubt, stated about the assault on his father and cousin also. But he has not stated in the fardbeyan that he personally witnessed, the same.

24. It appears from the injury on the person of the first informant that he was having grievous injury over his head besides two other incised injuries on his person and in this physical agony he came to learn about the death of his father and cousin in the State Dispensary. In this situation, he must have been stunned and if in that physical and mental agony he missed to mention that he had not personally witnessed the assault on his father and cousin and came to learn about the same in the State Dispensary, that was quite natural. His evidence in court cannot be disbelieved on that ground. But the fardbeyan contains the main facts of the prosecution case including the motive for the occurrence and assault on the two deceased.

25. The defence taken by the accused as stated above is that on the alleged date of occurrence the prosecution party came in a mob to take forcible possession of the land and they assaulted accused Prabhu Mandal and Chhedi Mandal for which accused Chhedi Mandal filed a case against the first informant and others. The defence has produced Ext. A the F.I.R. recorded on the statement of accused Chhedi Mandal at the police station but none of the accused persons in their statement u/s 313 of the Code has stated nor any witness has been examined on behalf of the accused to state the counter-version of the occurrence nor any injury report has been produced to indicate that accused Prabhu Mandal and Chhedi Mandal had sustained injuries on that day. Accused Kamleshwari Mandal (D.W. 1) and accused Anandi Mandal (D.W. 2) even in their evidence have not said anything about the counter-version of the occurrence as contained in Ext. A. Under the circumstances, I am not inclined to accept this defence taken on behalf of the accused.

26. Taking into consideration the facts and circumstances of the case and the evidence discussed above, I find and hold that the case of the prosecution has been fully established and I see no ground to interfere with the conviction and sentence passed by the trial court against the appellants.

27. In the result, I see no merit in the two appeals, and, accordingly, they are being dismissed. The conviction and sentence passed against the appellants of the two appeals are hereby confirmed.