

Criminal Appeal (D.B.) No. 141 of 1995 (P)

Against the judgment of conviction and order of sentence dated 27.05.1995 and 29.05.1995 respectively passed by Shri Sudarshan Upadhyay, learned IIIrd Additional Sessions Judge, Deoghar in S. T. No. 158 of 1993.

1. Raj Kishore Rai
2. Kameshwar Rai Appellants

Versus

The State of Bihar (now Jharkhand) Respondent

For the Appellants : Mr. Brij Bihari Sinha, Advocate
For the Respondent : Md. Azeemuddin, A.P.P.

Present:

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE DEEPAK ROSHAN

Per, R. Mukhopadhyay, J.

1. Heard Mr. Brij Bihari Sinha, learned counsel for the appellants and Md. Azeemuddin, learned A.P.P. for the respondent.
2. This appeal is directed against the judgment dated 27.05.1995 (sentence pronounced on 29.05.1995) passed by Shri Sudarshan Upadhyay, learned IIIrd Additional Sessions Judge, Deoghar in S. T. No. 158 of 1993 whereby and whereunder the appellants have been convicted for the offences under Sections 324 and 302 of Indian Penal Code and have been sentenced to undergo rigorous imprisonment for life.
3. The prosecution case arises out of the fard beyan of Dukh Haran Rai in which it has been stated that on 19.02.1992 at 4:30 P.M., he along with his brother Gunadhar Rai and Diwakar Rai were cutting earth on the land bearing Jamabandi No. 32 having total area of 10 kathas which on measurement was found to be falling within their share. This land was recorded in the name of Maharaj Rai, the great grand-father of the informant. It has been alleged that at the time of cutting of the earth, the accused persons had arrived armed with sword, bhala and lathi and began to abuse the informant and his brothers and thereafter started

assaulting them. The informant Dukh Haran Rai was assaulted by Nunuram Rai and Balram Rai with swords. Gunadhar Rai was assaulted with Bhala by Rajo Rai @ Rajkumar Rai and Kameshwar Rai on his back and head. It was alleged that Diwakar Rai was assaulted by Kameshwar Rai with Bhala and by Rajkishore Rai with sword. Due to such assault, the informant and his brothers sustained serious injuries.

4. Based on the aforesaid allegations Sarath P. S. Case No. 23 of 1992 was instituted for the offences punishable under Sections 341, 323, 324, 307 and 447 read with Section 34 of Indian Penal Code. On completion of investigation, charge-sheet was submitted under Section 323, 324, 325, 307, 447 and 302 of I.P.C. against the accused persons, since in the meantime, Gunadhar Rai had succumbed to his injuries. Cognizance was accordingly taken and the case was committed to the court of Sessions where it was registered as S. T. No. 158 of 1993. Charge was framed against the accused persons under Sections 324 and 302 of I.P.C. which was read over and explained to them in Hindi to which they pleaded not guilty and claimed to be tried.

5. The prosecution has examined as many as 6 witnesses in support of its case.

6. P.W. 1 - Diwakar Rai has stated that at the time of the incident, he along with his brothers Dukh Haran Rai and Gunadhar Rai were cutting the earth of plot no. 492 in order to remove its undulating character. Plot no. 492 was recorded in the name of his grand-father. He has stated that Balram Rai, Rajkishore Rai, Nunuram Rai and Kameshwar Rai had come to the place of occurrence; Rajkishore Rai had Bhala in his left hand and sword in his right hand. Balram Rai had lathi in his left hand and sword in his right hand, Kameshwar Rai had Bhala and Nunuram Rai was armed with lathi and all of them asked them to refrain from cutting the earth. They started abusing and assaulting. He was assaulted by Kameshwar Rai with Bhala on his back and by Raj Kishore Rai on his head with a sword. Nunuram Rai assaulted above his left eye with lathi. Gunadhar Rai was assaulted by Kameshwar Rai with Bhala on his throat and Rajkishore had assaulted him with a sword on his head as well as on his left knee. Dukhharan Rai was assaulted with a

sword on head by Balram and with a lathi on his back by Nunuram. After committing the assault, all the four accused persons fled away. All the injured persons were taken to Sarath hospital and Dukh Haran Rai had given his fard beyan to the police in the hospital. His statement as well as the statement of Gunadhar Rai were recorded by the police. He and Gunadhar Rai were referred to Deoghar hospital and after two days from his release from the hospital, Gunadhar Rai died.

In cross-examination, he has stated about the lineage of the injured and accused persons. He has deposed that there was a wall between his land and the land of the accused persons. In plot no. 492, there is a well which belongs to him and both the sides use the water of the well. There was a dispute regarding the wall bifurcating the house of injured and the accused persons. The accused persons wanted plot no. 492 as it was in front of their door. He did not have any altercation with the wife of Rajkishore Rai. It was Kameshwar Rai who had initially assaulted him with Bhala from the backside and thereafter Rajkishore Rai had assaulted him at his hand with sword, Nunuram Rai assaulted him with lathi due to which he suffered injury over the left eye-brow. Dukh Haran Rai was assaulted only once with a sword by Balram and Nunuram Rai had assaulted him with lathi 2-3 times. Gunadhar was also assaulted with a Bhala by Kameshwar Rai only once. He has deposed that Raj Kishore had assaulted Gunadhar on his head with a sword. When he raised alarm, no one came, but after the accused persons went away Fatu Rai, Sachiv Rai, Congress Rai and others had come. After half an hour of the incident the accused persons had instituted a case against him and others for making an attempt on their lives. When Gunadhar Rai died, he and his younger brother had gone to jail. A compromise was entered into which accompanied his application for bail. He has proved his signature and the signatures of Gunadhar Rai and Dukh Haraan Rai on the compromise petition which have been marked as Exhibit A, A/1 and A/2.

7. P.W. 2 – Dukh Haran Rai has stated that on 19.02.1992 at 4:30 P.M., he and his brothers Gunadhar and Diwakar were cutting the earth when Kameshwar Rai, Nunuram Rai, Balram Rai and Raj Kishore

had come armed with lathi, Bhala and sword and started abusing them. Thereafter they started assaulting and Kameshwar Rai pierced the throat of Gunadhar Rai with Bhala and Raj Kishore Rai had assaulted him with sword on head. The present witness was assaulted with sword on head by Balram Rai while Nunuram Rai had assaulted him on his back with a lathi. Diwakar Rai was also assaulted on his back with a Bhala by Kameshwar Rai. Gunadhar Rai had become unconscious as a result of the assault. When an alarm was raised, villagers had come to the place of occurrence. The accused persons after committing the assault had fled away while he and other two injured persons were taken to Sarath Police Station from where they were sent to Sarath hospital for treatment. Diwakar Rai and Gunadhar Rai were sent for better treatment to Sadar Hospital, Deoghar. Gunadhar Rai died after 12-13 days from the date of discharge from the hospital. He has identified his signature in the fard beyan which has been marked as Exhibit 1. He has also identified the signatures of Gunadhar Rai and Diwakar Rai as witnesses over the fard bayen which have been marked as Exhibit 1/1 and 1/2 respectively.

In cross-examination, he has deposed that the wall which is to the south of the disputed land was being claimed by the accused persons, but in reality, it belongs to him. The accused persons were not claiming the land, but wanted them to leave the land as it would benefit the accused persons. He has identified his signature in the compromise entered into which has been marked as Exhibit A/2.

8. P.W. 3 – Savitri Devi has stated that it was 4:00 P.M. on the date of occurrence and her sons Diwakar Rai, Gunadhar Rai and Dukh Haran Rai were clearing their land, when all of a sudden Rajo Rai, Nunuram Rai, Kameshwar Rai and Balram Rai came variously armed and Kameshwar Rai pierced the back of Diwakar with a Bhala. Kameshwar Rai also pierced the throat of Gunadhar with a Bhala and Balram had assaulted Dukh Haran on the head with a sword. Due to the assault, all had sustained serious injuries, after which they were taken to Sarath hospital for treatment from where they were referred to Sadar hospital, Deoghar, where treatment continued for a week. Gunadhar

was discharged from the hospital, but he did not recover and after two days, he died.

In cross-examination, she has deposed that the wall was constructed by her father-in-law Baikunth Rai and thrice measurement was done of the said wall to ascertain as to whether the wall fell in her land or in the land of the accused. She has deposed that Balram Rai was forcibly constructing a wall over the wall which was already in existence. Panchayati was held five times, but the wall was not removed by the accused persons. She has not seen any injuries on the person of Balram, Basanti and Raj Kishore.

9. P.W. 4 – Govind Ji Singh was the Officer Incharge of Sarath Police Station and on 18.02.2022 at 6:30 P.M., he has received a medical slip from Sarath Hospital on the basis of which he had gone to Sarath Hospital where he had recorded the fard beyan of Dukh Harain Rai. He has proved the fard beyan which has been marked as Exhibit 2. On the basis of the fard beyan, Sarath Police Station Case No. 23 of 1992 was instituted. He has proved the formal FIR which has been marked as Exhibit 3. He had recorded the re-statement of the informant and had also inspected the place of occurrence which is at village Dumaria in the front of the house of Balram Rai. In the north of the place of occurrence is the parti land of the informant and in the south is situated the house and land of the accused. He has proved the inquest report which has been marked as Exhibit 4. In course of raid, no incriminating article was recovered from the house of the accused. The witness – Savitri Devi had never disclosed before him that the accused persons were variously armed. She had also not stated that Kameshwar had pierced the Bhala at the back of Diwakar and at the throat of Gunadhar. She had also not stated about Balram assaulting Gunadhar with a sword on head. Diwakar Rai had not stated before him that Raj Kishore had a Bhala in his left hand as well as a sword in right hand. He had also not stated that Kameshwar had a Bhala and Nunu Ram had assaulted him with a lathi. He had also not stated that Kameshwar had assaulted Gunadhar with a Bhala on throat and Raj Kishore with sword on head and knee. He had not stated that Dukh Haran was assaulted with a sword on head. He has

identified the hand-writing and signature of Dr. Krishna Mohan Prasad which has been marked as Exhibit H, H/1 and H/2. The place of occurrence of Sarath P. S. Case No. 23 of 1992 and Sarath P. S. Case No. 24 of 1992 are the same.

10. P.W. 5 – Dr. Ravindar Kumar Chaurasiya was posted as a Civil Assistant Surgeon at Sadar Hospital, Deoghar and on 03.03.1992 he had conducted autopsy on the dead body of Gunadhar and had found the following injuries:

“Rigor mortis was present in both limbs. Stain of saliva present on the right side of his cheek upto the neck. Eyes were open. Teeth clear, tongue was incised.

Inquiry No. 1: *Head scar of recent origin in front of neck 1 ½" x ¾".*

2. *Defused swelling of the neck 2" x 2" just below the thyroid eminence.*
3. *Healed wound right temporal region 1" (stitched wound).*

On Internal Examination:

On cut section of scalp – subcutaneous haematoma just below the temporal region 1" x 1".

Brain was pale

On cut section of neck:

Haematoma was present just below the muscle in front of trachea. Just below the thyroid eminence. Unhealthy scar was present in front of trachea which was injured just below the thyroid eminence.

Collection of loose pus present just posterior to the trachea and left lateral side about 250 c.c. pus drained out. Oedema and sepsis of larynx and trachea was present.

Chest section of forex:

Lungs were pale. Heart right side full and left side empty.

Cut section of abdomen:

In stomach about 50 cc yellowish begined was present. Small intestine was full of liquid and gases. Liver, spleen and kidney were congested. Bladder was empty."

The cause of death was opined to be due to serious injury to the neck and trachea leading to sepsis (septic) and tracheal and laryngeal oedema (swelling) and further leading to the sepsis. He has proved the post mortem report which has been marked as Exhibit 5.

11. P.W. 6 – Dr. Krishna Mohan Prasad was posted as a Medical Officer at Sarath Primary Health Centre and on 19.02.1992 he had examined Gunadhar Rai and had found the following injuries:

“A sharp penetrating wound 1" x ½" x ½" over left side of throat closed to wind pipe.

Sharp cutting wound 4" x 1" x 1" over right side of posterior part of scalp.”

All the injuries were found to be simple, but injury no. 1 was dangerous to life.

On the same day, he had examined Dukh Haran Rai and had found the following injuries:

“A lacerated wound 4" x ½" x ½" over right side of volt of scalp. Nature of wound simple caused by hard blunt substance – such as lathi and blunt part of sword it is one edged.”

The injuries were found to be simple in nature caused by hard and blunt substance.

He had also examined Diwakar Rai on the same day and had found the following injuries:

- 1. A sharp penetrating wound 3" x 1" depth of the injury could not be explored. Patient returned to Sadar Hospital, Deoghar. Report awaited. X-ray advised. Injury was over left side of back of chest.*
- 2. A lacerated wound 4" x 1" x 1" over left side of volt of scalp.*
- 3. Lacerated wound 1" x ½" x ½" over left side of face-out side of left eye.*

Injury nos. 2 and 3 were found to be simple while opinion was reserved for injury no. 1.

The injury reports have been proved and marked as Exhibit 6, 6/1 and 6/2 respectively. He has also proved the slips which are in his handwriting and bears his signature which have been marked as Exhibit 7 and 7/1.

On 19.02.1992, he had examined Basanti Devi and had found the following injuries:

- 1. Incised wound 3" x 1" x 1" over left side of scalp.*
- 2. Bruise 4" x 3" over back of left side of chest.*

All the injuries were opined to be simple in nature, but the injury no. 1 was dangerous to life. The injury report has been marked as Exhibit 8.

On the same day, he had examined Balram Rai and had found the following injuries:

One abrasion 2" x 1" over back of left elbow.

The injury report has been marked as Exhibit H/1.

He has also examined Raj Kishore Rai and following injuries were found on his person:

- 1. Swelling of upper part of right forearm 8" x 4" with suspected fracture of both bones of forearms. D-ray advised.*
- 2. Bruise 3" x 3" over left side of scalp. Nature for no. 1 opinion reserved. No. 2 is simple caused by hard blunt.*

The injury report has been marked as Exhibit H/2.

12. The statements of the accused persons were recorded under Section 313 of Cr.P.C. in which they have denied their involvement in the incident.

13. The defence has examined two witnesses in support of its case.

14. D.W. 1 – Balram Rai has stated that his house in Dumaria is situated at Dag no. 496. There is a boundary wall which was constructed by his father and the same is in his possession. The land of Gunadhar Rai is in Dag no. 492 and his plot is at Dag no. 494 and in the middle of the plots, there is a well which is used by both the sides. The incident is of 17.02.1992 at 3:00 P.M. when he was in his house on which point of time his daughter-in-law Basanti Devi informed him that Gunadhar, Diwakar and Dukh Haran armed with Sabal and Kudal were demolishing his wall. On such information, he went and found that the wall was being razed. When they were picking up Saibal, Gaita and Kudal, the informant party abused them and Raj Kishore was assaulted with lathi on his right hand by Diwakar. He was thereafter assaulted on head with a lathi by Diwakar. Dukh Haran Rai had assaulted him with a lathi on head. When Basanti tried to save Raj Kishore, Gunadhar had assaulted Basanti with a Farsa on her head. He, Raj Kishore and Basanti

went to the hospital where they were treated. The police had come and recorded the fard beyan which was signed by him.

In cross-examination, he has deposed that the counter blast to this case is S. T. No. 42 of 2002 in which he has given his evidence. The incident had occurred at Dag no. 496.

15. D.W. 2 – Bhim Rai has stated that the incident is of 19.02.1992 at 3:30 P.M. and he was picking potatoes and Basanti Devi had gone to the well for fetching water. Gunadhar Rai, Diwakar Rai and Dukh Haran Rai were breaking the wall of Balram Rai and others with Sabal, Gaita and Kudal at which an alarm was raised and abusive language was used. Diwakar Rai had assaulted Raj Kishore Rai on his right hand and head with a lathi. He has stated that Dukh Haran Rai assaulted Balram Rai on his head with lathi while Gunadhar Rai had assaulted Basanti Devi with the blunt portion of Farsa.

16. Mr. Brij Bihari Sinha, learned counsel for the appellants has submitted that the appellants have falsely been implicated in the present case. It has been submitted that there was a dispute on account of the informant party breaking the wall and when objected, the appellant no. 1 and 2 and other accused persons were subjected to assault. The entire prosecution case rests upon the evidence of P.W. 1, P.W. 2 and P.W. 3 and all are interested witnesses being related to the deceased and absence of any independent witness renders the prosecution case doubtful. In fact the evidences of P.W. 1 and P.W. 3 seems to have developed the story of specifying the role played by each of the appellants, but in their statement before the I.O. (P.W. 4), no such insinuations have been cast upon the appellants. He has submitted that it was the informant party, who were the aggressors, but the story has been concocted and a new dimension has been given implicating both the appellants. The deceased Gunadhar Rai was discharged from the hospital after treatment which would suggest that he had recovered, but his subsequent death at his residence where he was recuperating cannot be attributed to the appellants. He has submitted that the autopsy report of the deceased and the injury report of the other members of the

informant party reveals mostly simple injuries which is contrary to the manner of assault as projected by the informant and his witnesses.

17. Mr. Azeemuddin, learned A.P.P. has submitted that the appellants and their accomplices were the aggressors and there coming to the place of occurrence variously armed would lead to an inference that the assault was pre-meditated and designed to inflict bodily injury and death to the informant and others. The manner of assault was so devastating that it led to the death of Gunadhar Rai and bodily injury to several others.

18. We have heard the learned counsel for the respective parties and have also perused the lower court records.

19. The informant party and the appellants seem to be related to each other and the dispute with respect to a wall bifurcating the house of both the sides led to a free fight and injuries were suffered by members of both the sides and the death of Gunadhar Rai. The appellant no. 1 as per the prosecution case had a Bhala and a sword while the appellant no. 2 had a Bhala and both the appellants along with the other accused persons has caused indiscriminate assault upon Gunadhar Rai (deceased), Dukh Haran Rai (informant) and Diwakar Rai and all sustained various injuries. The injuries found on Gunadhar Rai were opined to be simple in nature except injury no. 1 which was dangerous to life. Gunadhar Rai was initially treated at Sarath Primary Health Centre and on reference he was treated at Deoghar and released/discharged. Gunadhar had died after two days of his discharge and the autopsy report reveals that Sepsis had set in leading to his death. The doctor who conducted the autopsy in his cross-examination has stated that no patient is discharged until he is cured and out of danger. It would therefore suggest that the deceased was cured leading to his discharge from the hospital, but for whatever reasons; – be it negligence in the follow-up treatment or other reasons, the wound became septic leading to his death.

20. The injuries upon P.W. 2 were found to be simple in nature caused by hard and blunt substance while the injuries sustained by P.W. 1 were also simple though the opinion was reserved for injury no. 1.

From the side of the appellant, three persons sustained injuries including the appellant no. 1 and one of the injuries found upon Basanti Devi was opined to be dangerous to life. The indiscriminate assault with dangerous weapon like sword and bhala upon Gunadhar Rai seems to have been falsified as two of the injuries on left knee and scalp were found to be simple in nature. The participation of the appellants and the manner of assault seems to have been blown out of proportion as the evidence of P.W. 1 and P.W. 2 suggest and when we consider the evidence of P.W. 4 (I.O.), none of the said witnesses in their statements recorded under Section 161 Cr.P.C. had disclosed about the ferocity of the assault. The defence has examined two witnesses and their evidences have also to be given equal weightage. Both the witnesses have stated about the informant party being the aggressors, when the appellant and others had protested their attempt to demolish the wall. The evidence of P.W. 2 (Dukh Haran Rai) also indicates a dispute with respect to the wall. The scenario depicted above can surely lead to a conclusion that on account of the dispute regarding the wall, both the parties who are related clashed and resulted in injuries suffered by both the sides. Therefore, the evidence of D.W. 1 and D.W. 2 has a semblance of truth with respect to the cause of the incident. In fact, the evidence of D.W. 1 reveals about a counter case having been lodged by the accused persons to the present case with respect to the same incident. It would thus appear that both the parties wanted to settle the dispute and in course of time, the dispute flared up resulting in a free fight and resulted in injuries suffered by both the sides.

21. Such fact situation does not attract an offence under Section 302 of I.P.C. and therefore the conviction of the appellants is modified and they are convicted for the offence under Section 304 Part II of I.P.C. So far as the sentence is concerned, we must take into mind that the incident had taken place in the year 1992 and more than three decades have passed since then and the appellants are approaching 70 years of age and they have remained for 5 months in custody and taking into consideration these factors, the appellants are sentenced to the period already undergone by them.

22. This appeal is dismissed with the modification in the conviction and the subsequent sentence imposed upon the appellants.

23. Pending I.A., if any stands closed.

(Rongon Mukhopadhyay, J.)

(Deepak Roshan, J.)

Jharkhand High Court at Ranchi
The 10th day of June, 2024
R. Shekhar/NAFR/Cp. 3