

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.264 of 2015

(Against the Judgment of conviction dated 23.01.2015 and Order of sentence dated 31.01.2015 passed by the Additional Sessions Judge-IV, Patna City, Patna, in Sessions Trial No.1337 of 2008/Trial No.14 of 2014).

- 1. Chandan Rai, son of Sri Suresh Rai, resident of village- Janakpur, P.S. Gaurichak, in the district of Patna.
 - 2. Suresh Rai @ Suresh Prasad Singh, son of Sri Jamuna Singh @ Jamuna Rai, resident of village- Janakpur, P.S. Gaurichak, in the district of Patna.
 - 3. Shailendra Rai, son of Saryug Rai.
 - 4. Saryug Rai, son of Late Govind Rai.
 - 5. Jamun Rai, son of late Govind Rai.
- All residents of village- Janakpur, P.S.- Gaurichak, in the District of Patna

.... Appellants.

Versus

The State of Bihar

.... Respondent.

with

Criminal Appeal (DB) No. 339 of 2015

Birendra Rai @ Birendra Kumar Yadav @ Birendra Yadav @ Birendra Kumar, son of Bahadur Rai, resident of Village Sona Gopalpur, P.S. Gopalpur, District Patna.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

with

Criminal Appeal (DB) No. 346 of 2015

- 1. Ram Dayal Rai, son of Late Kaltan Rai.
- 2. Uma Rai, son of Ram Dayal Rai.
- 3. Bishundeo Rai, son of Late Mundrika Rai.
- 4. Ashok Rai, son of Late Deo Narain Rai.
- 5. Baskit Rai alias Basjit Rai, son of Late Binda Rai.
- 6. Sohrai Rai, son of Late Shiv Dayal Rai.
- 7. Ram Pravesh Rai, son of Late Shiv Dayal Rai.
- 8. Dina Rai @ Dinanath Rai, son of Ram Deyal Rai.
- 9. Shiv Shankar Rai, son of Late Deo Narain Rai.
- 10. Surendra Rai, son of Ram Dayal Rai.

11. Sujit Rai, son of Bishundeo Rai.
All residents of village - Janakpur, P.S. Gaurichak, District – Patna.

.... Appellants.

Versus

The State of Bihar

.... Respondent.

Appearance :

(In CR. APP (DB) No. 264 of 2015):

For the Appellants : M/s. Kanhaiya Prasad Singh, Akhileshwar Prasad Singh,
Senior Advocates, Mrs. Anita Kumari Singh, Dr. Rajesh
Kumar Singh & Mr. Prabhu Narain Sharma, Advocates.

For the State : Mr. Maya Nand Jha, A.P.P.

For the Informant : M/s. Dharendra Kumar Singh & Brij Bihari Tiwary, Advocates

(In CR. APP (DB) No. 339 of 2015):

For the Appellant : Mr. Durgesh Nandan, Mrs. Kiran Sinha & Miss Manisha
Prakash, Advocates.

For the State : Mr. Abhimanyu Sharma, A.P.P.

For the Informant : M/s. Dharendra Kumar Singh & Brij Bihari Tiwary, Advocates

(In CR. APP (DB) No. 346 of 2015):

For the Appellants : M/s. Shekhar Kumar Singh & Pankaj Kumar Jha, Advocates.

For the State : Mr. S.C. Mishra, A.P.P.

For the Informant : M/s. Dharendra Kumar Singh & Brij Bihari Tiwary, Advocates

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 06-04-2016

All the Appellants have been convicted under Sections
302/149 of the Indian Penal Code and sentenced to undergo rigorous
imprisonment for life and fine of Rs.10,000/-, in default of which, to
undergo further simple imprisonment for six months. They have
further been convicted under Sections 307/149 of the Indian Penal
Code and sentenced to undergo rigorous imprisonment for seven years
and fine of Rs.10,000/-, in default of which, to undergo further simple



imprisonment for six months. The Appellants, namely, Suresh Rai @ Suresh Prasad Singh, Chandan Rai, Uma Rai, Dina Rai alias Dinanath Rai and Shiv Shankar Rai have also been convicted under Section 148 of the Indian Penal Code and sentenced to further undergo rigorous imprisonment for three years whereas rest of the Appellants have also been convicted under Section 147 of the Indian Penal Code and sentenced to further undergo rigorous imprisonment for two years. The Appellants Suresh Rai alias Suresh Prasad Singh, Uma Rai, Dina Rai alias Dinanath Rai and Shiv Shankar Rai have further been convicted under Section 27(1) of the Arms Act and sentenced to further undergo rigorous imprisonment for five years and fine of Rs.5000/-, in default of which, to further undergo simple imprisonment for six months, vide Judgment of conviction dated 23.01.2015 and Order of sentence dated 31.01.2015 passed by the Additional Sessions Judge-IV, Patna City, Patna, in Sessions Trial No.1337 of 2008/Trial No.14 of 2014.

2. The case of the prosecution, according to the Informant Parmanand Singh (P.W.5), is that on 13.11.2007 at about 12 noon, he was suddenly informed by his nephew Rajesh (P.W.4) that the accused persons had come upon their lands and were forcibly taking possession of the same. He told him to go to inform the police and himself departed towards the field alongwith his cousin brother

Umesh Rai deceased, Arvind (P.W.1), Anil Kumar (P.W.2), Lala Rai (not examined), Ramnandan Rai (not examined) and Manish (P.W.3) and when he reached their field, he saw the accused, Chandan Rai, Suresh Rai, Uma Rai, Dina Rai, Ram Dayal Rai, Saryug Rai, Jamun Rai, Shailendra Rai, Shiv Shankar Rai, Bishundeo Rai, Ashok Rai, Dilip Rai, Sujit Rai, Udit Rai, Chandrashekhar Rai, Radheyshyam Rai, Ravindra Rai, Surendra Rai, Sohrai Rai, Ram Pravesh Rai, Baskit Rai and 5-6 more persons variously armed and trying to plough their lands. Appellant Suresh Rai had a rifle in his hand and he fired at his cousin brother the deceased Umesh Rai on his chest and Appellant Chandan Rai assaulted him with a 'Bhala' on account of which he fell down dead. Appellants Uma Rai, Dina Rai and Ram Dayal Rai are said to have caught hold of his brother Arvind Rai (P.W.1) whereas Appellant Uma Rai fired at him which hit him on his waist and Appellant Dina Rai fired at him which hit on his left arm due to which he also fell down injured. Then Appellant Ram Dayal Rai assaulted Arvind on the head with 'lathi' causing serious injury to him whereas Appellant Shiv Shankar Rai fired at his brother Anil Kumar (P.W.2) which hit him on his face and Appellants Ram Dayal Rai, Saryug Rai, Jamun Rai, Uma Rai, Shailendra Rai and Bishundeo Rai assaulted Manish Kumar (P.W.3), Lala Rai (not examined), Ramnandan Rai (not examined) with 'lathi' and rods causing injuries to them. The

rest of the accused, namely, Ashok Rai, Dilip Rai, Sujit Rai, Udit Rai, Radhey Shyam Rai, Bishundeo Rai and Baskit Rai also came and started to exhort everyone to kill them. Then the accused Ashok Rai, Dilip Rai, Sohrai Rai, Ram Pravesh Rai also assaulted Lala Rai (not examined) with 'lathi' on his head and shoulder. The Appellant Sujit Rai assaulted Manish Rai (P.W.3) with 'lathi' on his head. Appellants Udit Rai, Radheyshyam Rai and Baskit Rai assaulted Ramnandan Rai with 'lathi' on his head, chest and back. While the accused persons were fleeing away, police caught hold of Appellants Suresh Rai, Ram Dayal Rai, Saryug Rai, Jamun Rai and Shailendra Rai. From the possession of Appellant Suresh Rai, a country made gun was recovered. The reasons for the occurrence was land dispute between them.

It appears that this written report was given to the Officer Incharge of Gaurichak Police Station at the place of occurrence itself upon which the investigation started.

3. During trial, the prosecution examined altogether eight witnesses, out of whom, P.W.1 Arvind Rai, P.W.2 Anil Rai, P.W.3 Manish Kumar, P.W.4 Rajesh Kumar, P.W.5 Parmanand Singh, the Informant, are eye witnesses whereas P.W.6 Dr. Radha Raman Singh held the Post-Mortem Examination of the dead body of the deceased, P.W.8 is Dr. Ravindra Prasad, who examined the injured Anil Rai

(P.W.2) and P.W.7 Sanjeev Kumar is the Investigating Officer of the case.

4. On the other hand, the defence also examined four witnesses, namely, Appellant Saryug Rai (D.W.1), Niranjana Singh (D.W.2), Shiv Narain Singh (D.W.3) and Appellant Ram Dayal Rai (D.W.4).

5. P.W.1 Arvind Rai stated in his evidence that on 13.11.2007 while he was at his home, he saw a tractor running on his land, so the deceased Umesh Rai told him to go and see as to who was ploughing their lands with a tractor and also asked him to accompany him. He, then, alongwith Anil (P.W.2), Manish (P.W.3), Lala Rai and Ramnandan Rai (not examined) reached the fields. The Deceased Umesh Rai asked the tractor driver, Appellant Birendra Rai not to plough their lands but he did not listen. The rest of the accused persons were also present on the fields and then accused Ravindra Rai ordered everyone to assault at which Appellant Suresh Rai fired at the deceased Umesh Rai due to which he fell down injured. Appellant Chandan Rai is said to have given a 'Bhala' blow on the head of the deceased due to which he died then and there. Appellant Uma Rai fired at him causing injury at his stomach whereas Appellant Dina Rai fired which hit him on the left hand. Appellant Shiv Shankar Rai is said to have fired at Anil Rai (P.W.2) which hit him on his lip.

Appellants Baskit Rai, Sohrai Rai and Ram Pravesh Rai assaulted Lalal Rai (not examined) with 'lathies' whereas accused Dilip, Shekhar, Bishundeo etc. assaulted Ramnandan (not examined) with 'lathis'. In the meanwhile, police came and then Appellants Jamun Rai, Suresh Rai, Saryug Rai, Shailendra Rai and Ram Dayal Rai were apprehended alongwith their arms.

In cross examination, he explained that both the parties belong to the same ancestors and the lands had been partitioned during life time of his grand father but he did not know as to which share of the plot on partition had been allotted to them. He further explained that since the partition had not taken place in his life time, he did not know the exact details. He also explained that his father were three brothers but they were separate and the rent receipts were issued to them individually and they are in possession of the lands according to rent receipts but he could not give the details of the said lands. He also asserted that the reason for the occurrence was a dispute regarding five Bighas and five Kathas of lands but he could not explain the boundary. He also explained that he had remained in hospital for about 42 days and he had regained his consciousness only after two days of the occurrence. It was suggested to him that they were not in possession of the disputed land. It was also suggested to him that he had not taken the name of the Appellant Birendra Singh in

his earlier statement which he denied but this fact was confirmed by the Investigating Officer (P.W.7).

From the evidence of this witness, it appears that he has stated that while he himself was injured by Appellants Uma Rai and Dina Rai but there is no injury report on record and, thus, we are only left with an oral evidence in this regard. There is no explanation also for not furnishing the injury report. Hence, this Court is inclined to take a lenient view on the allegation levelled against the two Appellants. We also take note of the fact that in his earlier statement, he had not taken the name of Appellant Birendra Rai.

6. P.W.2 Anil Rai, an injured witness, has repeated that on 13.11.2007 while he was at home, his nephew Manish Kumar (P.W.3) came and told him that the accused persons including the Appellants were forcibly trying to plough their lands and when the deceased Umesh Rai asked them not to do so, Appellant Suresh Rai fired at the deceased Umesh Rai which hit on his chest and Appellant Chandan Rai had assaulted him with a 'Bhala' on his head. He narrated the rest of the manner of assault by the rest of the accused persons and, soon thereafter, five accused persons were apprehended with arms and the injured was removed to the hospital.

It appears from his evidence that after part of the occurrence had taken place, he had reached the place of occurrence

and had been fired by the Appellant Shiv Shankar Rai which had hit him on his lip and, thereafter, accused Ravindra Rai assaulted him on his head with 'lathi' and when rest of the witnesses, namely, Lala Rai, Ramnandan Rai (not examined) and Manish Rai (P.W.3) came there, they were assaulted by the accused persons. A lot of cross examination had been directed as to where the injured were treated but it has no relevance.

From his evidence, it appears that P.W.1 Arvind Rai and the deceased Umesh Rai were his own brothers and he asserted that the lands upon which the occurrence had taken place belonged to them.

From his cross examination, it appears that it was suggested to him that, in fact, he had not named the Appellant Birendra Yadav, who was allegedly driving the tractor, earlier, but he denied such suggestion. However this fact was corroborated by the Investigating Officer (P.W.7). In such circumstances, to the extent of implication of the Appellant Birendra Yadav, this witness does not appear to be fair.

It also appears from the evidence of P.W.8 who had examined this injured on 14.11.2007, i.e. a day after the occurrence that he had found the following injuries on his person:

- (I) Stitched wound of 2" size over right parietal

region.

- (II) Stitched wound of 1" size over mid parietal region.
- (III) Stitched wound over 2" size mid parietal region.
- (IV) Stitched wound over left frontal region over 2" size.
- (V) Stitched wound over left frontal temporal region of 3" size.
- (VI) Stitched wound over upper lip left inner size over 1" size.
- (VII) Multiple abrasions over left thigh and left arm.
- (VIII) Bruise over left lower chest size 3" x 1" and over abdomen size of 1" x 1".

In cross examination, the Doctor stated that this witness was previously treated in N.M.C.H, hence, he could not give any opinion with regard to the nature of injuries and weapons used in respect to the injuries sustained by the witness.

7. P.W.3 Manish Kumar, who is also named in the First Information Report, stated that on the date of occurrence while he was sitting at the temple, he saw about 30 persons getting his lands ploughed with the help of a tractor. He identified all the accused persons including the Appellant Birendra Rai. He then ran away to inform his father, the deceased Umesh Rai, and his uncles Anil Rai

(P.W.2), Arvind Rai (P.W.1), Ramnandan Rai, Lala Rai (not examined) and brought them to the fields. The deceased Umesh Rai told the tractor driver, Appellant Birendra Rai, not to plough the fields but he retorted that he should keep away otherwise he would run the tractor over him. In the meanwhile, Appellant Suresh Rai came with a rifle and fired at his father on his chest on account of which he died. The rest of the accused persons variously assaulted the other injured which has been mentioned earlier. He himself was assaulted by Appellant Sujit Rai. He stated that soon thereafter police arrived and caught hold of five accused persons with arms.

In cross examination, surprisingly, he stated that he had not been examined by the police. He asserted that he had been treated at N.M.C.H. and he remained admitted there for about 6-8 days but we find no injury report of this witness regarding his treatment on record. He also explained that the parties belonged to the same ancestors and his grand father had partitioned the lands. He denied the suggestion that, in fact, he had not named Appellant Birendra Rai in his earlier statement recorded under Section 161 of the Code of Criminal Procedure but the Investigating Officer (P.W.7) corroborated this fact. In such circumstances, apart from the fact that there is no injury report to prove his presence at the place of occurrence, we also find that he had not disclosed the complicity of the Appellant Birendra

Rai at the initial stage.

8. P.W.4 Rajesh Kumar is next eye witness, who had reportedly told the Informant that the lands had been forcibly ploughed by the accused persons and he corroborated the fact that then he went to inform the police and when he returned, reportedly saw the occurrence as narrated by the Informant. He also stated that he scripted the written report which was signed by the Informant Parmanand Singh (P.W.5) and he proved the same as Ext.2 as also the signature of the witnesses as Ext.1/1 series. He also conceded that the dispute was over piece of land on which both parties were claiming their rights.

In cross examination, he explained that he had informed the police on the mobile phone since the number was available to him and the police had come soon thereafter as also the accused started to flee on seeing the police but five accused were apprehended. He explained the relationship of the rest of the witnesses and the deceased with each other from which it appears that they all belong to the same family. He also denied the suggestion that, in fact, he had not named Appellant Birendra Rai as a tractor driver earlier which fact is corroborated by Investigating Officer, Sanjeev Kumar (P.W.7).

9. P.W.5 Parmanand Singh is the Informant, who repeated the factum of occurrence, as detailed in the Fardbeyan, as also by the

earlier witnesses.

In cross examination, he explained that the occurrence had taken place on account of the land dispute which was being claimed even by the accused persons. He also explained that it was only 10-15 days after the occurrence, he learnt that Appellant Birendra was driving the tractor but he did not disclose this fact to the Investigating Officer. There is nothing else which is of note in his cross examination.

It appears from his evidence that a proceeding under Section 107 of the Code of Criminal Procedure is pending between the parties and even though they belong to the same family, they had active litigation with each other.

10. P.W.6 Dr. Radha Raman Singh held the Post-Mortem Examination of the dead body of the deceased and found the following injuries on his person.

On External Examination.

- (I) Perforating wound with blackened margin of size 1.5cm x 1 cm cavity deep on right side of chest situated 6 cm. above and lateral from right nipple and 14 cm. right from mid sternal line. This wound was surrounded with tattooing on area 26 cm x 20 cm on right side of chest.
- (II) Tattooing on areas 12 cm x 7 cm on right side

of face and all area 24 cm x 13 cm on medial aspect of left thigh.

(III) Longitudinally situated lacerated wound of size 5.5 cm x 1 cm x bone deep of left parietal region.

(IV) Multiple abrasions on forehead outer aspect of left arm and left side of back of size ranging from 2 cm x 1 cm to 1/4 cm x 1/4 cm.

On Internal Examination:

(1) A hole of size 5 cm x 2 ½ cm x cavity deep was found with lateral margin on second intercostal space of anterior wall of chest. Sternum was fractured. Bruise and haematoma was found on muscle of right chest wall.

(2) Blood in massive amount was found in thoracic and abdominal cavity. One bullet like metallic object was recovered from 9th inter costal muscle of left lateral wall of chest. Size of bullet 3.25 in length and 0.5 cm in diameter.

(3) Right lung, heart and stomach wall were perforated through and through, all viscera were pale, bladder was empty. Trachea was pale, stomach content was 200 ml. rice food stuffs.

In his opinion, the weapons used were firearm and hard blunt substance.

In cross examination, he had explained that he had found only one firearm injury on the dead body and had not found any injury

by sharp cutting instrument as also that 'Bhala' and 'Garasa' were pointed weapon causing penetrating wound.

11. P.W.7 Sanjeev Kumar is the Investigating Officer of the case, who stated that while he was posted at Gauri Chak Police Station, on 13.11.2007 at about 11.45 A.M. he received information that some persons were forcibly taking possession of land and there was every possibility of assault. He then reached the place of occurrence and found one person dead and three persons seriously injured. He mentions their names. Immediately thereafter, the accused persons were chased and five of them were apprehended. Appellant Suresh Rai had a loaded rifle whereas he did not mention any arms in the hands of the Appellants Jamun Rai, Saryug Rai, Shailendra Rai and Ram Dayal Rai, who were also apprehended. He stated that he prepared the Inquest Report (Ext.4) and collected the blood stained lathi and prepared the seizure list, which was already marked as Ext.3. He received the written report of the Informant Parmanand Singh upon which the First Information Report was instituted which he marked as Ext.7. He also stated that the dead body was sent for Post-Mortem Examination to N.M.C.H. and the injured was sent with requisitions marked as Exts.8, 8/A and 8/B. He found that the Appellant Birendra Rai was the owner of the tractor, which was found at the place of occurrence. He described the place of

occurrence being an open field which was half ploughed. He stated that the P.O. land was in possession of the Appellants and it was the Informant who was trying to capture the same.

He also explained in his cross examination that the Informant had not produced any document with regard to the possession of the land in question. He also stated that there was a proceeding under Section 107 of the Code of Criminal Procedure pending between the parties.

12. The defence also examined four witnesses and proved the documents to show that, in fact, the Accused were in possession of the land in question and that the P.O. land belonged to them.

13. D.W.1 Saryug Rai himself is the Appellant in the present case, who stated that one partition suit was pending vide Partition Suit No.283 of 2010 and he had filed a document to show that they were in possession of the land in question which he proved as Exts.A, A/1, B and C.

14. D.W.2 Niranjan Singh also stated that being Pairvikar of the Accused he knew about the possession of the lands and proves the documents in the Partition Suit which is Ext.D.

15. D.W.3 Shiv Narain Singh as also D.W.4 Ram Dayal Rai are also on the same point. No doubt, D.W.4 in his cross examination stated that there was series of decisions in Appeals with

regard to the land in dispute between the parties.

16. Having gone through the evidence of the witnesses, we find that the Appellant Birendra Rai alias Birendra Kumar alias Birendra Yadav alias Birendra Kumar {in Criminal Appeal (DB) No.339 of 2015}, who is said to be the tractor driver was not named in the First Information Report nor at the earlier instance and he has been roped in much later. The Investigating Officer also did not make any inquiry in regard to him being the tractor driver and, hence, we acquit him of all the charges giving him benefit of doubt.

17. As for Appellant Suresh Rai alias Suresh Prasad Singh, we find that there is consistent evidence that he was the person who had fired at the deceased and was apprehended by the police soon thereafter with a rifle. Thus, his complicity in the case is absolutely proved. However, in view of the evidence of the Investigating Officer that the land in question was in possession of the Appellants as also admission of all the witnesses that the parties belong to the same ancestors and there was land dispute between the parties which fact is also corroborated by the defence witnesses, we are inclined to hold that his act would fall as exceeding his right of private defence of property and, therefore, his conviction under Sections 302/149 is converted into one under Section 304 Part-I of the Indian Penal Code.

18. As for the Appellant Chandan Rai, even though there

is allegation against him of having assaulted the deceased with 'Bhala' but when no such injury was found by the doctor (P.W.6), we acquit him of the charges under Sections 307/149 of the Indian Penal Code.

We are also inclined to hold that in the facts of the case, rest of the Appellants had no common object to cause the death of the deceased and, hence, they are acquitted of the charges under Sections 302/149 of the Indian Penal Code. After holding that, in fact, the land belonged to the Appellants, there is no justification for their conviction even under Section 148 of the Indian Penal Code.

19. In the result, Appellants Chandan Rai, Shailendra Rai, Saryug Rai, Jamun Rai, Birendra Rai alias Birendra Kumar Yadav alias Birendra Yadav alias Birendra Kumar, Ram Dayal Rai, Uma Rai, Bishundeo Rai, Ashok Rai, Baskit Rai alias Basjit Rai, Sohrai Rai, Ram Pravesh Rai, Dina Rai alias Dinanath Rai, Shiv Shankar Rai, Surendra Rai and Sujit Rai are acquitted of all charges whereas Appellant Suresh Rai alias Suresh Prasad Singh is convicted under Section 304 Part-I of the Indian Penal Code and sentenced to the period already undergone.

It appears that Appellants Chandan Rai, Shailendra Rai, Saryug Rai and Jamun Rai {in Criminal Appeal (DB) No.264 of 2015} are in jail custody, therefore, they are directed to be released

forthwith, if not wanted in any other case. So far as Appellant Birendra Rai alias Birendra Kumar Yadav alias Birendra Yadav alias Birendra Kumar {in Criminal Appeal (DB) No.339 of 2015} and Appellants Ram Dayal Rai, Uma Rai, Bishundeo Rai, Ashok Rai, Baskit Rai alias Basjit Rai, Sohrai Rai, Ram Pravesh Rai, Dina Rai alias Dinanath Rai, Shiv Shankar Rai, Surendra Rai and Sujit Rai {in Criminal Appeal (DB) No.346 of 2015} are concerned, they are on bail, therefore, they are discharged from the liabilities of their bail bonds.

20. Accordingly, Criminal Appeal (DB) No.264 of 2015 is partly allowed to the extent indicated above and Criminal Appeal (DB) No.339 of 2015 and Criminal Appeal (DB) No.346 of 2015 are allowed.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

**Pradeep Srivastava/A.B. Bhardwaj/
A.F.R.**

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