

CRIMINAL APPEAL ((DB) No.191 OF 1988

Against the judgement and order dated 6.4.1988 passed by Sri Tarkeshwar Prasad, Ist Additional Sessions Judge, Arrah in Sessions Trial no.63/1982.

1. Sheonandan Yadav
2. Baikunth Yadav
3. Indradeo Yadav
4. Pujan @ Rampujan Yadav
5. Sheoprasad Yadav
6. Jagdish Yadav
7. Rabi Shanker Yadav
8. Kishori Yadav
9. Doman Yadav

(Appellants)

Versus

State of Bihar (Respondent)

For the appellants:

Mr. Dhruv Narayan, Sr. Adv.
Mr. Jitendra Prasad Singh, Adv.
Mr. Abhishek, Adv.

For the State:

Mr. Lala Kailash Bihari, Sr. Adv. & APP

P R E S E N T

THE HON'BLE MR. JUSTICE SUDHIR KUMAR KATRIAR

THE HON'BLE MR. JUSTICE MADHAVENDRA SARAN

M. Saran, J.

This appeal has been preferred against the judgement and order dated 6.4.1988, passed by learned Ist Additional Sessions Judge, Arrah, in Sessions Trial no. 63/1982, by which all the appellants have been convicted u/s 302/149 of the Indian Penal Code (in short IPC), and have been sentenced to undergo R.I for life. Appellant Baikunth Yadav has further been convicted u/s 148 of the IPC, and has been sentenced to undergo R.I

for one year. He has further been convicted u/s 325 of the IPC and has been sentenced to undergo R.I for two years. All the appellants except Baikunth Yadav have been convicted u/s 147 of the IPC, and have been sentenced to undergo R.I for six months. Appellants, namely, Indradeo Yadav, Doman Yadav, Kishori Yadav, Rabi Shanker Yadav, Jagdish Yadav, Sheoprasad Yadav and Pujan @ Ram Pujan Yadav have also been convicted u/s 323 of the IPC and have been sentenced to R. I for three months. All the sentences have been directed to run concurrently.

2. Shortly stated, the prosecution case is that informant Anatia Devi, wife of deceased Ram Ekbal Yadav, on 19.3.1981, at about 10 AM, gave her fard bayan at Muffasil police station before PW7, Baidyanath Singh, Officer-in-charge of Muffasil police station, in presence of her husband and son Rambabu Yadav in injured condition, to the effect that she was on inimical terms with appellant Sheonandan Yadav for partition of certain lands and due to that enmity while harvesting of the field was going on, a quarrel between them started on which Sheonandan Yadav instigated and then the other accused/appellants, namely, Baikunth Yadav armed with Khanti, Indradeo Yadav, Doman Yadav, Kishori Yadav, Rabi Shanker Yadav, Krishna Yadav, Vijay Yadav, Gopal Yadav, Jagdish Yadav, Sheoprasad Yadav and Pujan @ Ram Pujan Yadav came there variously armed and assaulted her, her husband, and her son with Khanti and Lathi on different parts of their body as a result of which they fell down in the field. She further stated that Baikunth Yadav assaulted her with Khanti causing fracture of her left hand. Indradeo Yadav assaulted her with iron-fitted Lathi. Sheoprasad assaulted her with Lathi. Besides them other accused persons assaulter her husband and son due to which they were badly injured and due to injury her husband was not in a position to speak, and was lying

at the police station. She further stated that villagers Sukhendra Yadav, Sitaram Yadav and Kashinath have witnessed the occurrence. The statement so made was read over to her and finding it to be correct she put her L.T.I. The police took up investigation of the case. All the injured were sent to Arrah Sadar hospital. The informant's husband was referred to PMCH, Patna, on 20.3.1981 for better treatment as his condition was serious. It appears that during the course of treatment, the informant's husband Ram Ekbal died in PMCH on 21.3.1981. His inquest report was prepared by police officer of Pirbahore, police station, Patna. The police after investigation submitted charge sheet. After cognizance the case was committed to the court of Sessions where the accused/appellants faced the trial and were convicted and sentenced as mentioned above. It appears that case of accused Krishna, Gopal and Vijay was separated from the trial of the present appellants as they were found to be minors and so their case was sent to children court for disposal.

3. The defence of the appellants was total denial of the alleged occurrence and false implication in the case due to land dispute and family feuds.

4. Thus the only point for consideration is whether the prosecution has been able to establish its case against the appellants beyond all reasonable doubt.

5. In order to substantiate its case, the prosecution examined in all seven witnesses. PW1 Anatia Devi is the informant and wife of the deceased, Ram Ekbal Yadav. PW2 Tetari Devi is daughter of the informant. PW3 Rambabu Yadav is an injured and son of informant. PW4 Sukhendra Yadav is a co-villager and an eye-witness of the occurrence. PW5 is Dr. R. P. Srivastava who performed autopsy on the dead body of deceased Ram

Ekbal Yadav. PW6 is Dr. Rabindra Nath Sahay of Arrah Sadar hospital who examined the injuries of all the injured. PW7 Baidyanath Singh is investigation officer of the case. Two witnesses have also been examined on behalf of the appellants who are DW1 Tungnath Prasad, and DW2 Balmiki Singh.

6. PW6 Dr. Rabindra Nath Sahay on 19.3.1981 was posted as Civil Assistant Surgeon at Sadar hospital, Arrah. On the same day, at 12.30 PM, he examined Ram Ekbal Yadav (deceased) and found the following injuries on his person:-

- (i) Abrasion $\frac{1}{4}$ "X $\frac{1}{4}$ " on left cheek;
- (ii) Swelling 2"X2"X $\frac{1}{2}$ " on the left temporal region;
- (iii) Swelling 8"X3"X1" on the left side of back;
- (iv) Ecchymosis 6"X1"X on the left side of back;

According to the doctor, all the injuries were simple in nature except injury no.2 of which opinion was reserved for want of X-ray and patient was referred to PMCH, Patna, on 20.3.1981. The injury report is exhibit-2.

On the same day, at 12.50, PM he examined the informant Anatia Devi and found the following injuries:-

- (i) Deformity 4"X2"X $\frac{1}{4}$ " on left fore arm;
- (ii) Abrasion $\frac{1}{2}$ "X $\frac{1}{4}$ " at the site of injury no.1;
- (iii) Fracture of radius ulna at the same site;

The nature of injuries grievous caused by hard and blunt substance. Age of the injuries within 12 hours. The injury report is exhibit-2/1.

On the same day he examined Rambabu Yadav and found the following injuries:-

- (i) Swelling 1"X1/2"X1/4" on the right side of scalp;
- (ii) Swelling 1"X1/2"X1/4" on the right side of chest;

Both the injuries were simple in nature caused by hard and blunt substance such as Lathi. Age of injuries within 12 hours. Injury report is exhibit-2/2.

In cross-examination he stated that Ram Ekbal was treated by him but not operated before referring him to PMCH, Patna. He stated that on his head two injuries were found by him and one of the injury was on the cheek (but that also comes under the heading of head), and the other injury was on left temporal region and actually on scalp there was no injury. X-ray was not produced before him. He further explained that injury nos. 1 and 2 of Anati Devi were simple and injury no.3 was grievous, caused by hard and blunt substance.

It appears that on the same day, at 12.40 PM, he examined accused Baikunth Yadav at Sadar hospital, Arrah, and found the following injuries on his person:-

- (i) Cut 1/2"X1/4"X1/4" on centre of forehead;
- (ii) Cut 1/2"X1/4"X1/4" on centre of forehead;
- (iii) Cut 1/2"X1/4"X1/8" on the left upper arm;
- (iv) Swelling 2"X1"X1/2" on left elbow;
- (v) Piercing wound 1/2"X1/4"X1/4" on left buttock.

Age of the injuries within 12 hours. All the injuries were caused by sharp-cutting weapon except injury no.4 which was by hard and blunt substance. The injury report is exhibit-C.

7. PW5 Dr. R.P. Srivastava on 22.3.1981, was posted as tutor in Forensic Medicine at PMCH. On the same day, at 11 AM, he had performed post-mortem examination on the dead body of Ram Ekbal and

found the following ante-mortem injuries on his person:-

(i) Surgically stitched wound 10"x1/2"X brain cavity deep on the left side of scalp over left temporal, parietal and frontal region;

(ii) Multiple abrasion on the right side of scalp;

(iii) On dissection skull bone in an area of 5"X 3 1/2" including portions of left temporal parietal and frontal bone was absent. The margins were irregular. Blood clot in the scalp was present. Through the gap in skull bone the brain matter was protruding and meninges were torn. Extra dural blood was present on the left temporal and parietal lobes of brain. Brain was congested. Subdural haematoma present over left hemisphere of brain. Except injury no.1 the rest were caused by hard and blunt substance. Opinion of injury no.1 could not be given due to surgical interference. Time elapsed since death was approximately 24 hours. Cause of death was head injury. The injuries were sufficient in ordinary course of nature to cause the death. Post-mortem report is exhibit-1. In cross-examination he stated that the patient was treated and operated previously. He, however, did not operate the patient. He cannot say how many blows were given on the head of deceased causing the injuries because of earlier surgical interference.

8. PW1 Anatia Devi is informant and one of the injured of this case. She stated before the court that on 19.3.1981, at 8-9 AM, she was harvesting tisi crops in her field situated at a distance of two bighas in east from her house. The said land was 18 kathas in measurement and the same was purchased by her husband in the name of her father-in-law Ramgulam. The half area of the said land was in her possession and the rest half was in possession of appellant Sheonandan. Sheonandan is step-brother of her husband. She further stated that while she was harvesting tisi crop

Sheonandan arrived there armed with a gun and started moving around the field. Her daughter Tetari (PW2), and son Rambabu (PW3), were also in the field with her and later on her husband came there after performing puja. In the meantime, all the accused, namely, Baikunth Yadav, Vijay Yadav, Krishna Yadav, Indradeo Yadav, Doman Yadav, Kishori Yadav, Rabi Shanker Yadav, Jagdish Yadav, Sheoprasad Yadav and Pujan @ Ram Pujan Yadav arrived there. Baikunth Yadav was armed with Khant. Indradeo was carrying Rami (sharp iron fitted in the Lathi). They began to assault her husband with Khant, Rami and Lathi and due to assault her husband fell down but even then they continued to assault him. Accused Indradeo, Sheoprasad, Baikunth and Vijay assaulted her. According to this witness, Baikunth assaulted her with Khant on her left hand causing fracture of bone and others assaulted her from behind. She also fell down after sustaining the assault. Accused Indradeo, Krishna, Kishori and others assaulted Rambabu. He also fell down. After making the assault the accused persons fled away. People of nearby places were present and saw the occurrence. The injured were taken to Muffasil police station. The police officer recorded her statement which was read over to her and she put her LTI over the same. She further stated that a quarrel had taken place for share in the above-mentioned land. Her father-in-law in his life time had partitioned the land among them but Sheonandan was not agreeable to the partition. She identified the accused present in the dock and claimed to identify the others who were represented through their lawyer. In cross-examination, she stated that her father-in-law, Ramgulam, had two marriages and from the first wife accused Sheonandan and Triveni were the two sons, and from the second wife her husband was the only son. She further stated that the place of occurrence land was not in three toprass rather

the same was in two topas only. Area of both the topas were equal. She further stated that after seven topas in west from the place of occurrence there is land of Chhabila and west of land of Chhabila she has got her house. She has denied that they assaulted Baikunth in the alleged occurrence and that he sustained injuries for which he was treated at Sadar hospital, Arrah. However, she admitted that on the same day Baikunth had filed a case of assault against her, Tetari, Chandeshwar and Ram Ekbal and others. Then at para 13 she stated that Yogendra, SiyArrahm and Kashinath had seen the occurrence and they are her covillagers. According to this witness, her husband died on the next day in course of operation of the wound at PMCH.

9. PW2 Tetari Devi is the daughter of the informant. She stated that on the day of occurrence, at about 8 AM, she was harvesting tisi in the field of her father. Her mother was also there. Her brother Rambabu arrived with his son. Her father came after performing puja. Accused Baikunth Yadav, Indradeo Yadav, Sheonandan Yadav, Doman Yadav, Kishori Yadav, Rabi Shanker Yadab, Jagdish Yadav, Sheoprasad Yadav, Pujan @ Ram Pujan Yadav, Krishna Yadav, Vijay Yadav and Gopal arrived there. Baikunth was armed with iron Khanti and Indradeo was carrying Rami. Sheonandan was carrying gun and other accused persons were armed with Lathi. According to this witness, Sheonandan was walking on the ridge. She further stated that Indradeo surrounded her father. Sheonandan instigated to assault and thereafter Baikunth assaulted him by means of Khanti. Indradeo assaulted him by Rami and thereafter other accused persons assaulted him by means of Lathi. When she went to save her father Kishori, Krishna and Vijay assaulted her. Then Kishori, Rabi Shanker, Baikunth and Indradeo assaulted her brother Rambabu. All the 12 accused assaulted him. Accused

Baikunth and Indradeo assaulted her mother due to which she sustained fracture of her arm. She identified the accused persons in the dock. In cross-examination at, para 10, she stated that first of all her father was assaulted and thereafter her mother and brother were assaulted. She only sustained a Lathi blow on her waist. She, however, did not show her injury to the police officer. Then at para 13 she stated that her father was assaulted by all the accused persons once only but her mother and brother sustained several blows on their person. She has admitted that Baikunth had filed a case for an occurrence of the same day for causing assault to him against her family members but she did not see any injury on the person of Baikunth on that day.

10. PW3 Rambabu Yadav is son of the informant and other injured of this case. He stated that on the day of occurrence at about 8 AM he was in the field. His mother and sister were also there. His mother was harvesting tisi crop and they were preparing string for making bundles of the same. His father came there to take key from his mother and when he began to return to his house all the accused surrounded and began to assault his father by means of Lathi, Khanti and Rami. His father as a result of assault fell down. His mother rushed to save him but Baikunth assaulted on her left hand by Khanti causing fracture. Vijay, Baikunth, Indradeo and others also assaulted his mother. His mother fell down. When he rushed to save his mother Vijay assaulted on his left shoulder by means of Lathi. Krishna assaulted on his head by means of Lathi. He fell down and then Krishna assaulted on his chest and Gopal gave a blow on his thigh. Kishori assaulted his sister. In cross-examination at para 8, he stated that 6-7 villagers arrived at the place of occurrence before the accused could run away and out of them he identified Sudhendra, Siyaram, Kashinath and

Nageshwar. He further stated that after receiving the assault he became senseless and regained senses only at Arrah hospital. Then at para 10 he stated that marpit did not take place in the tisi field, rather the same took place in between his house and tisi field.

11. PW4 Sudhendra Yadav is a co-villager and has claimed to have seen the occurrence. He stated that about 8-9 AM, he was in his house and on hearing hulla he went to the place of occurrence. He saw 12 persons present there. Sheonandan was armed with gun, Baikunth was carrying rami. Indradeo was armed with Khanti and the other accused were armed with Lathi. His evidence is on the same lines. According to this witness, Baikunth, Indradeo, Kishori and Jagdish assaulted Ram Ekbal and other accused persons had surrounded him. They were also brandishing Lathi. Baikunth assaulted Anatia by Khanti. Other accused also assaulted her by means of Lathi. Krishna, Rabi Shanker, and others assaulted Rambabu. In cross-examination at para 4, he stated that the marpit took place at a distance of two bamboos in east from the house of Ram Ekbal and according to this witness one bamboo is equal to 25 cubits in length. He further stated that assault did not take place in the filed of Nageshwar rather the same took place in another field just by the side of the filed of Nageshwar and that filed belonged to Suresh Yadav.

12. PW7 Baidyanath Singh is the investigating officer of the case. He stated that on 19.3.1981 he was posted as officer-in-charge of Muffasil police station. On that day Anatia Devi, her husband Ram Ekbal, and son Rambabu came at the police station in injured condition. He recorded fard bayan of Anatiya Devi over which she put her LTI. The fard bayan is exhibit-3. He thereafter recorded her further statement. He has proved the formal FIR exhibit-4. He prepared the injury report of all the

injured, exhibit-2 series. He further stated that Rambabu and Ram Ekbal were unconscious and so their statement could not be recorded. He sent all the injured to hospital. He inspected the place of occurrence in presence of PWs 2 and 4 which is a barren land of Ram Chhabila situate adjacent east to the house of Ram Ekbal Yadav. It was at a distance of 150 yards in west from the land of deceased Ram Ekbal, Triveni and Sheonandan Yadav which was in three toprās. He found that the crops of northern two toprās had been harvested but in the southern topra the harvested wheat crop was lying in the field. He found crop on the south western corner of the plot scattered and smashed. After returning from the place of occurrence, he went to the Sadar hospital and learnt that Ram Ekbal had been sent to PMCH for treatment. He recorded the statement of Rambabu in the hospital. He received inquest report of Ram Ekbal on 23.3.1981. He has proved the inquest report exhibit-5. In cross-examination, he stated that on the same day he recorded the statement of accused Baikunth Yadav. The fard-bayan of Baikunth is exhibit-A. On the basis of the said statement of Baikunth, he registered Muffasil PS case no.27/81. He investigated the case and submitted charge sheet. He further stated that he had inspected the person of Tetari (PW2) while recording her statement but did not find any injury over her body. He further stated that main place of occurrence land is a barren land of Chhabila where he did not find any remarkable sign. He further stated that he has not mentioned in the case diary whether he had found tisi crops in the field.

13. The accused appellants examined two witnesses in their evidence. DW1 Tungnath Prasad is a formal witness who has proved the certificate exhibit-E. He has stated that certificate was not given in his presence nor did he know its contents.

14. DW2 Balmiki Singh is the person who had issued exhibit-D. He stated that there is attendance register of the employees of the hostel of which he was Superintendent. He stated that exhibit-D was issued at the instance of Indradeo Yadav but he could not say as to on which date in the month of March 1981 the school and hostel were closed. He further stated that Indradeo asked him about the certificate about 2-3 months back but he did not enquire from him what for the certificate was required. He further stated that after going through the register, he could say whether accused Indradeo was present in the hostel or not on the alleged date of occurrence and that register, it appears, was not produced before him while giving the evidence. He further stated that distance from Arrah to Agiaon is 12 miles only.

15. It has been contended on behalf of the appellants that it is admitted position that appellant Sheonandan Yadav is step brother of the deceased Ram Ekbal Yadav and there was quarrel between the informant and other co-sharers with regard to their share in the ancestral land. He contended that from the evidence of PWs 1 to 4, it appears that there is no explanation of the injuries found on appellant Baikunth Yadav and further the prosecution does not clearly establish the manner in which the occurrence took place in view of admitted land dispute between the deceased and appellant, Sheonandan Yadav. He, thus, contended that in view of these facts the appellants are liable to be convicted u/s 304 II of the IPC.

16. Before I proceed to examine the contention of the learned counsel, the background of the incident and the nature of injuries caused to the three injured, beside other materials, require to be properly considered and appreciated. The background of the present incident as mentioned

above is that appellant Sheonandan Yadav and the informant are from the same family. Land dispute was continuing between them and on the date of occurrence there was some quarrel and altercation between the parties for harvesting of crops standing over some plots. While the informant's party was harvesting the crop, the quarrel started and on the instigation of Sheonandan Yadav the other accused eleven in numbers arrived variously armed and assaulted the informant, her husband and her son. From exhibit-A, it appears that appellant Baikunth Yadav had filed a counter case, vide Muffasil PS case no. 27 of 1981 u/ss 324, 323 and 307 of the IPC, on similar allegations giving the same date and time of occurrence. PW6 during medical examination found in all five injuries on the person of Baikunth Yadav. PW1 has not made any specific allegation of assault by the appellants which caused the death of her husband rather she has made an ambiguous statement alleging assault by all the appellants by Lathi except Baikunth and Indradeo who were armed with Khanti and Rami respectively. It has come in the evidence that Sheonandan Yadav, step brother of the deceased, arrived armed with gun and started moving around the field where harvesting was going on by the informant's party. After quarrel, appellant Sheonandan Yadav called the other appellants who arrived and assaulted the three persons. From the injury report, exhibit-2 series, it appears that three injured of the present case sustained few injuries on their person. In the opinion of the doctor (PW6), all the injuries on the body of Ram Ekbal were found to be simple in nature except injury no.2 which was swelling on left temporal region and the opinion with respect to the same was reserved by him for want of X-ray. From the evidence of PWs 1 to 4, it appears that there is no explanation of the injuries found on the person of Baikunth Yadav. The informant's husband died on 21.3.1981, at PMCH,

and the nature of injuries found on his person could not be ascertained by the doctor (PW5) who performed post-mortem examination as there was surgical wound and operation was not performed by him in PMCH. The doctor who performed surgery was not examined in the case to state the nature and gravity of the injuries sustained by Ram Ekbal in course of the occurrence.

The post-mortem report shows that the deceased had some surgical wound on the head probably due to that wound he died. The doctor has also stated in his post-mortem report that no opinion with respect to nature of injuries sustained by him and weapon by which it was inflicted could be given due to surgical interference. It appears to me that during the occurrence a fight took place between the informant's party and Sheonandan Yadav and others including Baikunth Yadav in which the informant's party and accused Baikunth Yadav sustained injuries.

17. It is stand of the learned counsel for the appellants that the injuries sustained by the deceased were in course of sudden quarrel, without premeditation and without cruel intents and, therefore, Section 302 of the IPC is not applicable. According to him, Section 302 of the IPC cannot be applied even if the prosecution case is accepted in toto, and exception 4 of Section 300 is clearly applicable.

Exception 4 to Section 300 of IPC reads as follows:-

Culpable homicide is not murder if it is committed without premeditation in a sudden fight, in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

Explanation- It is immaterial in such cases which party offers the provocation or commits the first assault.

To invoke this exception four requirements must be satisfied

namely:-

- (i) it was a sudden fight;
- (ii) there was no premeditation;
- (iii) the act was done in a heat of passion;
- (iv) the accused had not taken any undue advantage or

acted in cruel manner.

From the evidence on record, it appears that the occurrence took place between the informant's party and Sheonandan Yadav and his associates over harvesting the crop in which the informant's family and appellant Baikunth Yadav sustained injuries. Appellant Sheonandan Yadav who was armed with a gun did not use the same in the incident. The three injured of the prosecution side did not sustain many injuries. The accused were 12 in numbers and, as per evidence all of them, participated in the assault but the doctor (PW6) of Sadar hospital, Arrah, found only four injuries on the person of Ram Ekbal Yadav. Admittedly Ram Ekbal died on 21.3.1981 at PMCH, Patna, in course of operation. As mentioned above, on the date of the alleged occurrence, the doctor of Sadar hospital, Arrah, had found five injuries on the person of Baikunth Yadav and four of which were incised wounds. From the evidence on record, it also appears that the appellants had not acted in cruel or unusual manner.

18. I have seen the evidence of PWs 1 to 4. They have fully stood the test of cross-examination. The presence of PWs 1 to 3 at the place of occurrence cannot be doubted. The evidence of these witnesses is supported by the FIR which was recorded on the same day just 3-4 hours after the occurrence. PW4 saw the appellants participating in the occurrence. The doctor (PW6) found injuries on the person of PWs 1 and 3 and informant's husband Ram Ekbal Yadav. These four witnesses

corroborate each other in material particulars and the manner in which this occurrence took place. The court below has rightly accepted the evidence of PWs 1 to 4, and I find no good ground to differ with the view taken by the trial court so far as the story of assault is concerned. Taking over-all view of the incident, I am inclined to think that the appellants are entitled to the benefit of Section 304 part I of the IPC.

19. In the aforesaid facts and circumstances, the conviction of all the appellants is altered to one under u/s 304 Part I of the IPC and all the appellants are sentenced to undergo R. I. for 10 years. The conviction and sentence as awarded by the court below under sections 147, 148, 323 and 325 of IPC against the respective appellants shall stand. All the sentences awarded shall run concurrently. The bail bonds of the appellants are cancelled and they are directed to be taken into custody to serve out the remaining period of sentence.

(M. Saran,J.)

I agree.
S.K. Katriar,J.

(S. K. Katriar,J.)