

**IN THE COURT OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE
AT NORTH LAKHIMPUR**

G.R CASE NO: 1706 OF 2015
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: MAKHAN BISWAS & ORS

DISTRICT: NORTH LAKHIMPUR
IN THE COURT OF ADDITIONAL CHIEF JUDICIAL
MAGISTRATE, AT NORTH LAKHIMPUR

GR CASE NO: 1706 / 2015

U/S 147/148/447/326/427 OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: MAKHAN BISWAS AND ORS.

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P
ADVOCATE FOR THE ACCUSED: SMTI K. BARUAH

CHARGE FRAMED ON : 03.06.2016
EVIDENCE RECORDED ON : 28.07.16, 06.09.16, 04.10.17, 19.03.18,
24.05.18, 15.09.18.

ARGUMENT HEARD ON : 04.05.2019
JUDGMENT DELIVERED ON : 07.05.2019

JUDGMENT

PROSECUTION'S CASE IN BRIEF

1. Prosecution's case in brief as it reveals from the F.I.R is that the accused persons named in the F.I.R have been illegally possessing the land belonging to informant Sri Sanjoy Dora. On 28/08/2015 at about 08:00 A.M in the morning, the accused persons armed with "dao", sword, "lathi" etc arrived at the aforesaid land of informant and started to plough that land with the help of a tractor. At

that time, informant's brother Sri Binod Dora and Sri Biren Dora raised objection to such ploughing of land by the accused persons, but the accused persons assaulted said Sri Binod Dora and Sri Biren Dora with sharp weapon thereby causing injury on various parts of their body as a result of which they were taken to "Saboti" Civil hospital for treatment in a critical condition. The accused persons also entered into the homestead of informant's neighbour Sri Swapan Singh and Uttam Kumar Singh and caused destruction of bamboo fencing and tress. The informant thereafter lodged an F.I.R about the occurrence before the Superintendent of Police, North Lakhimpur who forwarded the same to O/C of North Lakhimpur P.S for taking lawful action.

2. On receipt of FIR, the O/C of North Lakhimpur P.S registered the same as North Lakhimpur P.S Case No. 897/2015. On completion of investigation, I.O of the case submitted charge-sheet against accused persons Sri Makhan Biswas, Sri Santosh Biswas, Sri Subhash Bhowmik, Sri Nibesh Biswas, Sri Ajit Biswas, Sri Harabandhu Bhowmik, Sri Subhash Biswas, Sri Chandan Biswas, Sri Dipak Biswas and Sri Lakhan Mallik for the offences punishable under section 147/148/149/447/326/427 of IPC. Copies of relevant documents are supplied to the accused persons u/s 207 of CrPC. After hearing both sides and perusal of case record, charge is framed against the above named ten accused persons for the offences punishable u/s 147/148/149/326/427 of IPC. The charges are then read over and explained to the accused persons to which they pleaded not guilty and stood to face trial.

3. During trial, prosecution side examined as many as nine witnesses; whereas the accused persons did not examine any witness for defence. The accused persons are examined u/s 313 CrPC. Defence case is of total denial as it reveals from the statement made by the accused persons and the tenor of cross-examination of prosecution witnesses by defence. I have heard the arguments of the learned counsels for both sides and also gone through the materials available on record.

4. Upon such hearing and after perusal of case record, I have framed the following points for determination to arrive at a proper decision of the matter involved:

POINTS FOR DETERMINATION:

(i) Whether the accused persons on 28/08/2015 at about 08.00 AM, at Bilgarh, within North Lakhimpur police station, were members of an unlawful assembly, the common object of which was to take possession over the land of the place of occurrence by show of force, and in prosecution of that common object the accused persons used force or violence, and thereby committed an offence punishable under section 143 of I.P.C?

(ii) Whether the accused persons on 28/08/2015 at about 08.00 AM, at Bilgarh, within North Lakhimpur police station, were members of an unlawful assembly, the common object of which was to take possession over the land of the place of occurrence by show of force, and in prosecution of that common object the accused persons armed with deadly weapons like "dao", sword, "lathi" etc used criminal force or violence upon informant's brother Sri Binod Dora and Sri Biren Dora and thereby committed an offence punishable under section 148 of I.P.C?

(iii) Whether the accused persons on 28/08/2015 at about 08.00 AM, at Bilgarh, within North Lakhimpur police station, were members of an unlawful assembly, the common object of which was to take possession over the land of the place of occurrence by show of force, and in prosecution of that common object the accused persons caused grievous hurt to informant's brother Sri Binod Dora and Sri Biren Dora and thereby committed an offence punishable under section 149 of I.P.C r/w Section 326 of I.P.C?

(iv) Whether the accused persons on 28/08/2015 at about 08.00 AM, at Bilgarh, within North Lakhimpur police station, voluntarily caused grievous hurt to informant's brother Sri Binod Dora and Sri Biren Dora by means of "dao", "sword" and "lathi", which are instruments of stabbing and cutting, and thereby committed an offence punishable under section 326 of I.P.C?

(v) Whether the accused persons on 28/08/2015 at about 08.00 AM, at Bilgarh, within North Lakhimpur police station, with the intent to cause, or knowing that they are likely to cause, wrongful loss or damage to informant's neighbour Sri Swapan Singh and Uttam Kumar Singh, caused destruction of the bamboo fencing and tress of their homestead, and thereby committed offence punishable under section 427 of IPC?

DISCUSSION OF EVIDENCE, DECISION AND REASON THEREOF:

5. For the sake of convenience, and as because point no.1, 2, 3, 4 & 5 are inter-connected, hence they are taken up herein together for discussion & decision as follows:

6. As regards the aforesaid points for determination, PW-1 Md. Rustam Ali in his evidence-in-chief has stated that about 8 years back on a day at about 8.00 AM, he was called upon by his co-villager Makhan and Subhash to plough their field with his tractor. While he was ploughing the paddy field, at that time Sri Binod Dora and another passed through that paddy field. Thereafter, the accused persons assaulted said Binod Dora and another. Accused Dipak was holding a 'Dao' in his hand and stabbed the person accompanying said Binod Dora with the said 'Dao' near his shoulder. The other accused persons hit said Binod Dora and his companion with rod and "lathi". Thereafter, he/PW-1 came back to his house.

7. PW-2 Sri Sanjay Dora in his evidence-in-chief has stated that he is the informant. About one year back at about 8.00 AM in the morning, he came out of his house after hearing hue and cry in the paddy field. At that time, the accused persons hit his (PW2's) brothers Sri Bandhu Dora and Sri Binod Dora with an axe. He then took said Bandhu Dora and Binod Dora to his house in an injured condition. Thereafter, he filed this case in the police station. Exhibit-1 is the F.I.R lodged by him in which Exhibit-1(1) is his signature.

8. PW-3 Sri Raju Dora in his evidence-in-chief has stated that the informant is his brother. About one year back on a day in the morning in between 07:00 – 08:00 A.M, he was ploughing his paddy field. His brother Sri Bandhu Dora called him to the adjacent paddy field. At that time accused persons were ploughing that field with a tractor. His brother Bandhu Dora then raised objection to the accused persons but the accused persons stabbed Sri Binod Dora and Sri Bandhu Dora with 'Dao' and sword. The accused persons then fled away. Subsequently, 108 ambulance was called upon and they were sent to hospital.

9. PW-4 Sri Swapan Singh in his evidence-in-chief has stated that in the year 2015 on a day in the month of August at about 08:30 A.M in the morning, the occurrence took place at Bilgarh Pathar. The disputed land belongs to grandmother of informant and the same was given on lease for the purpose of cultivation to Sri Harendra Bhoumik by Arjun Dora. The informant demanded back that land but Arjun Dora refused to return. Thereafter, dispute started to take place between the parties. On the day of occurrence, Subhash Bhoumik was

ploughing the disputed land with a tractor. Prior to that, a notice was issued and police of Silonibari out-post ordered not to plough the disputed land. Then Binod Dora, Arjun Dora, Bandhu Dora and others came and asked Subash Bhomik why he was ploughing the paddy field despite the direction of police not to plough the land. Then all the accused persons came armed with Dao, "lathi", etc and attacked Bandhu Dora and Binod Dora. Both Binod Dora and Bandhu Dora sustained cut injury on their body. Thereafter, the villagers took both the injured persons to Saboti Civil Hospital for treatment. Both the victims got treatment for about one month. Thereafter, police recorded my statement regarding the incident.

10. PW-5 Sri Badal Adhikari in his evidence-in-chief has stated that he know the complainant of this case. He knows the accused persons. In the year 2015, one day in the morning at about 8.00 AM one Subash Bhomik was ploughing the paddy field situated behind the "Mandir". At that time, Sri Bandhu Dora and Sri Binod Dora came and attacked Bashab Dora with arrow. Thereafter, the accused persons assaulted Binod Dora and Bandhu Dora with stick.

11. PW7 Sri Nikhil Rajkhowa (Inspector of police), who has completed the investigation of this case, in his evidence in chief has stated that A.S.I Sri Diganta Kalita had conducted the preliminary investigation of this case and then handed over the case diary to him (PW7) on 13/10/2015. Thereafter, he/PW7 submitted charge sheet against above named ten accused for the offences u/s 147/148/149/447/326/427 of I.P.C. Exhibit – 2 is the charge sheet submitted by him in which exhibit – 2(1) is his signature. During his cross-examination, PW7 has stated that the charge sheet number and date mentioned in the charge sheet are over written. He did not examined all the aspects of this case while submitting the charge sheet. He had completed the investigation and submitted charge sheet of the cross-case of this case. The accused persons were possessing the disputed land since many days. The description of that disputed land is not given in this case. No weapon was seized in connection with this case.

12. PW8 Dr. Jatindra Nath Medok, who is the Sub-Divisional Medical officer, in his evidence in chief has stated that on 28/08/2015 one Sri Binod Kanda Dora was examined by Dr. Mrs Barnali Sarmah and following injuries were detected:

- (i) Lacerated incise wound over right shoulder (2.5 X 1 X 1 C.M)
- (ii) Incised wound over thumb (1.5 X 1 X 1 C.M)

- (iii) Incised wound over right third finger tip (1 X 1 X 0.5 C.M)
- (iv) Two incised wound over mid scalp (6 X 1 X 1 C.M)
- (v) Two incised wound behind right ear (2 X 1 X 0.5cm & 1 X 1 X 0.5cm)
- (vi) Loss of tissue from upper part of right ear.

The injuries are caused by sharp weapon and age of injury is less than 12 hours. Exhibit – 3 is the report in respect of above examination in which exhibit – 3(1) is the signature of Dr. B. Sarmah which is known to him/PW8, and exhibit -3(2) is his signature. On the same day and time, another patient Sri Bondhu Dora was examined by Dr. B. Saikia and following injuries were detected:

- (i) Sharp cut injury at right parital region of scalp (5 X 1 X 1 C.M)
- (ii) Sharp cut injury on lateral aspect of left arm (3 x 1 ½ x 1 C.M)
- (iii) Sharp cut injury over back of chest scapular region (4 x 1 ½ x 1 C.M)
- (iv) Sharp cut injury over proximal end of proximal phalex of right index finger
- (v) Sharp cut injury over proximal end of right thumb (1x1x ½ C.M)
- (vi) Abrasion of forehead, right shoulder, left thumb, left little finger (Uneven)
- (vii) Swelling over right arm in middle third.

The injuries noted in serial no. i, ii, iii, iv, & iv are simple in nature and caused by sharp object. The injuries noted in serial no. vi and vii are simple in nature and caused by blunt object. Exhibit – 4 is the report in respect of above examination in which exhibit – 4 (1) is the signature of Dr. B. Saikia which he knows, and exhibit – 4(2) is his signature.

13. During his cross-examination, PW8 has stated that the injuries may be caused by falling on sharp object. He has not produced the O.P.D register before this court. The victims/ patients did not come to him/PW8 subsequently for check-up.

14. PW9 Sri Diganta Kalita (A.S.I) of police in his evidence in chief has narrated the details of investigation done by him. PW9 has stated that exhibit – 5 is the sketch map in which exhibit – 5 (1) is his signature. During cross-examination, PW9 has stated that he proceeded to the place of occurrence immediately after receipt of F.I.R but failed to find the accused persons there. He found witnesses Md. Rustam Ali, Swapan Singh and others in the place of occurrence.

15. At the time of arguments, learned counsel for the defence submitted that the absence of seizure of any weapons shows that the allegations of physical

assault by accused persons with "dao", "lathi", sword are absolutely false and concocted. It is also argued by learned counsel for defence that there are material inconsistency in the versions of prosecution witnesses for which they cannot be relied upon. Learned counsel for defence has therefore prayed for acquittal of the accused persons.

16. On going through the evidence deposited by PW1, PW2, PW3, PW4 & PW5 as narrated above, it is seen that the crux of allegation against the accused persons is that on the day of occurrence at about 08:00 A.M in the morning, the accused persons were allegedly ploughing the paddy field i.e., the place of occurrence, and at that time informant's brother Sri Binod Dora and Sri Bondhu Dora arrived there and raised objection to such ploughing of paddy field by the accused persons. Thereafter, the accused persons allegedly stabbed said Sri Binod Dora and Sri Bondhu Dora with "dao" and "lathi" thereby causing injury to them.

17. Now, before going to form any conclusive opinion on the basis of foregoing evidence deposited by prosecution witnesses, it is necessary to find out as to whether the versions stated by them are reliable or not. Therefore, let me discuss the statements made by prosecution witnesses in their respective cross-examination so as to find out whether there is anything substantial which can create any reasonable doubt regarding the truthfulness of the versions made in their evidence in chief.

18. From the cross-examination of PW1, it is seen that at the time of occurrence he/PW1 was ploughing the paddy field belonging to accused persons on being asked by accused Sri Subhash. PW3 in his cross-examination has stated that the accused persons are ploughing that paddy field since last 30 years. It is also stated by PW2 & PW3 in their cross-examination that the accused persons claim to have purchased the said paddy field from the grandmother of informant and a number of cases are instituted between both the parties with respect to land dispute. PW4 in his cross-examination has stated that the accused persons were cultivating and possessing the land since before his/PW4's birth till prior to the incident. PW5 in his cross-examination has stated that the accused persons were possessing and enjoying the disputed land for more than 20 years prior to the incident, and the dispute arose when the complainant side tried to grab the

disputed land forcefully. PW7/I.O in his cross-examination has stated that the accused persons are possessing the disputed land since many years back.

19. From the statements made by prosecution witnesses as narrated in the previous paragraph, it is can be understood that at the time of alleged occurrence the accused persons were in possession of the paddy field i.e., the place of occurrence. Further, the informant and his brothers have claimed ownership over the said paddy field, and the alleged occurrence started when informant's brother Sri Binod Dora and Sri Bondhu Dora by raising their claim over that paddy field objected to the ploughing of that field by accused persons.

20. The foregoing facts which came out from the cross-examination of prosecution witnesses, in my opinion, do not in any way create any doubt regarding the truthfulness of the version made by them in their respective evidence in chief with respect to the alleged assault by accused persons. Further, I do not find anything substantial in the cross-examination of prosecution witnesses which can create any reasonable doubt regarding the truthfulness of their version. In addition to that, upon perusal of the evidence deposed by PW1, PW2, PW3, PW4 & PW5 as narrated above, I find that their versions are fully consistent and they have corroborated each other in all material aspects. Also, PW1, PW4, & PW5 are independent witnesses and hence there is nothing to disbelieve the version stated by them in their evidence.

21. Besides the above, PW8 Dr. Jatindra Nath Medok, who is the Sub-Divisional Medical Officer at North Lakhimpur Civil Hospital, in his evidence has corroborated the case of prosecution by stating that on 28/08/2015 Sri Binod Dora and Sri Bondhu Dora were examined by Dr. Mrs B. Sarmah and Dr. B. Saikia, respectively, and multiple injuries were detected on their body. The aforesaid injuries detected by the medical officer on the body of said Sri Binod Dora and Sri Bandhu Dora supports the allegation of "hurt" being caused by the accused persons. Also, the detection of multiple injuries on the body of said two victims suggests that the victims were hit by weapons a number of times. This, in my opinion, supports the allegation of prosecution that all the accused persons hit the said two victims with "dao" and "lathi".

22. At this juncture, it is necessary to mention that PW5 in his evidence in chief has stated that initially Sri Bandhu Dora and Sri Binod Dora attacked Bashab Dora with arrow and thereafter the accused persons assaulted Binod

Dora and Bandhu Dora with stick. In this respect, perusal of case record shows that there is nothing in the evidence which can properly disclose the identity of said Sri Bashab Dora. There is nothing in the case record to show that said Sri Bashab Dora is a family member of the accused persons. As such, even if it is presumed to be true that initially said Sri Binod Dora and Sri Bondhu Dora attacked Sri Bashab Dora with arrow, then also, in my opinion, such statement of PW5 is of no adverse consequence to the case of prosecution. Moreover, even if it is presumed that Sri Bashab Dora is a family member of the accused persons, then also such a statement of PW5, in my opinion, cannot be of any adverse consequence to the prosecution as the alleged assault by Sri Binod Dora and Sri Bondhu Dora upon Sri Bashab Dora do not mean that the accused persons cannot beat Sri Binod Dora and Sri Bondhu Dora as alleged. In fact, PW5 has specifically mentioned that thereafter the accused persons assaulted Binod Dora and Bandhu Dora with stick

23. Before parting with the discussion, I would like to mention here that admittedly I.O of this case has not seized any "dao", or sword, or "lathi" from the accused persons. However, it is seen that the prosecution witnesses have consistently stated that the accused persons have stabbed Sri Binod Dora and Sri Bondhu Dora with "dao" and "Lathi". Also, it is noticeable that as per PW8 (Medical Officer), some of the injuries detected on the body of Sri Binod Dora and Sri Bondhu Dora were caused by sharp weapon, and some of the injuries were caused by blunt weapon. Under such circumstances, in my opinion, even though the I.O has not made any seizure in this case but the evidence deposited by prosecution witnesses leaves no room for doubt that the injuries detected on the body of said Sri Binod Dora and Sri Bondhu Dora were caused by "dao" and "lathi".

24. Therefore, considering the entire discussion made above, I find that the version stated by PW1, PW2, PW3, PW4, PW5 & PW8 in their respective evidence is believable and can be relied upon. As such, on the basis of evidence deposited by all the prosecution witnesses as narrated above, it is found that on the day of occurrence at about 08:00 A.M in the morning, the accused persons were ploughing the paddy field i.e., the place of occurrence, and at that time informant's brother Sri Binod Dora and Sri Bondhu Dora arrived there and raised objection to such ploughing of paddy field by the accused persons. Thereafter, all

the accused persons gathered there in order to cause hurt to said Sri Binod Dora and Sri Bondhu Dora and then stabbed said Sri Binod Dora and Sri Bondhu Dora with "dao" and "lathi" thereby causing multiple injury on their body.

25. The fact that the accused persons gathered at the place of occurrence and stabbed Sri Binod Dora and Sri Bondhu Dora with "dao" and "lathi" on being objected for ploughing the paddy field, in my opinion, clearly shows that the accused persons have voluntarily hit Sri Binod Dora and Sri Bondhu Dora with the intention to cause hurt. It is necessary to mention here that there is nothing in the evidence on record which can specifically show that the injury detected on the body of said Sri Binod Dora and Sri Bondhu Dora falls within the category of injuries listed in Section 320 of I.P.C. Also, there is nothing in the case record which can show that the injuries detected had endangered the life of said Sri Binod Dora and Sri Bondhu Dora, or that the injuries detected caused them severe bodily pain for a period of 20 days or more. As such, it cannot be said that the accused persons caused grievous hurt. However, from the aforesaid discussion and findings, it is clear that the accused persons have caused hurt to Sri Binod Dora and Sri Bondhu Dora with "dao" and "lathi" which are instruments of stabbing or cutting. Hence, it is clear that the accused persons have committed an offence punishable under section 324 of I.P.C. It may be mentioned here that though the accused persons were charged u/s 326 of I.P.C and not for the offence u/s 324, but in view of Section 222(1) of CrPC, I do not find any impediment in convicting the accused persons for the offence u/s 324 of I.P.C.

26. In view of the above discussion, I find that the witnesses examined by prosecution have proved beyond reasonable doubts that the accused persons have committed the offences punishable under section 147/148/149/324 of I.P.C. Needless to mention here that none of the witnesses examined by prosecution have stated anything about any destruction of property by the accused persons. As such, it is evident that there is no iota of evidence to support the allegations of offence punishable under section 427 of I.P.C as alleged.

DECISION: Point no.1, 2, 3 & 4 are therefore decided in the affirmative and goes in favour of prosecution. Point no. 5 is decided in the negative and goes against the prosecution.

ORDER

27. In view of the discussion made and decision reached in the point for determination, it is held that the prosecution has failed to prove that the accused persons have committed the offence punishable under section 427 of I.P.C. Hence, all the accused persons are acquitted from the charge u/s 427 of I.P.C.

28. However, it is held that the prosecution has proved beyond reasonable doubt that accused persons Sri Makhan Biswas, Sri Santosh Biswas, Sri Subhash Bhowmik, Sri Nibesh Biswas, Sri Ajit Biswas, Sri Harabandhu Bhowmik, Sri Subhash Biswas, Sri Chandan Biswas, Sri Dipak Biswas and Sri Lakhan Mallik have committed the offences punishable under section 147/148/149/324 of I.P.C. As such said all the ten above named accused persons are held guilty for commission of offences punishable u/s 147/148/149/324 of I.P.C. Accordingly, accused Sri Makhan Biswas, Sri Santosh Biswas, Sri Subhash Bhowmik, Sri Nibesh Biswas, Sri Ajit Biswas, Sri Harabandhu Bhowmik, Sri Subhash Biswas, Sri Chandan Biswas, Sri Dipak Biswas and Sri Lakhan Mallik are convicted for the commission of offences punishable under section 147/148/149/324 of I.P.C.

29. As the offence is committed in broad day light, and also as because significant injury is caused to the victims, hence I am of the opinion that releasing the accused under the provision of Probation of Offenders Act will portray a very lenient approach of the court and thereby encourage other potential offenders to commit similar offences in future which will ultimately create a sense of insecurity in the minds of people. Hence, I am not inclined to extend the benefits of Probation of Offenders Act to the accused persons. I have heard all the accused persons on the point of sentence. The accused persons have pleaded for mercy as they are all daily wage labour by profession. Considering all aspects, all the above named accused persons are sentenced to pay a fine of Rupees of 200/- (two hundreds) each for the offence u/s 147 of I.P.C, in default to undergo S.I for 3 months each, and also to pay a fine of Rupees 300/- each for the offence u/s 148 of I.P.C, in default to under S.I for 3 months each, and also to pay a fine of Rupees 300/- each for the offence u/s 149 I.P.C r/w Section 324 of I.P.C, in default to undergo S.I for 3 months each, and also to pay a fine of Rupees 500/- each for the offence u/s 324 of I.P.C, in default to undergo S.I for 4 months. The total fine to be paid by each accused is

Rupees 1,300/- (thirteen hundreds).The period of imprisonment in default of payment of fine shall run concurrently. The fine, if deposited, be paid to victim Sri Binod Dora and Sri Bondhu Dora in two equal shares as compensation.

This judgment is given under my hand and the seal of this court on this the 07th day of May, 2019.

This case is disposed of on contest.

F.U. Choudhury
Additional Chief Judicial Magistrate
North Lakhimpur

APPENDIX**(A) PROSECUTION EXHIBITS**

Exhibit. 1 – F.I.R

Exhibit. 2 – Charge Sheet.

Exhibit. 3 – Medical report of Sri Binod Dora

Exhibit. 4 – Medical report of Sri Bondhu Dora

Exhibit. 5 – Sketch Map

(B) DEFENCE EXHIBITS

Nil

(C) PROSECUTION WITNESSES

P.W. 1 – Md. Rustam Ali

P.W. 2 – Sri Sanjoy Dora

P.W. 3 – Sri Raju Dora

P.W. 4 – Sri Swapan Singh

P.W. 5 – Sri Badal Adhikari

P.W. 7 – Sri Nikhil Rajkhowa

P.W. 8 – Dr. Jatindra Nath Medok

P.W. 9 – Sri Diganta Kalita

(D) DEFENCE WITNESSES

Nil

F.U. Choudhury
Additional Chief Judicial Magistrate
North Lakhimpur