
(2023) 08 GAU CK 0074

Gauhati High Court

Case No: Criminal Appeal No. 133 Of 2011

Dipen Rajkonwar

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision: Aug. 30, 2023

Acts Referred:

- Indian Penal Code, 1860 - Section 302, 304I, 324, 326
- Code Of Criminal Procedure, 1973 - Section 161, 164, 313, 374(2)
- Evidence Act, 1872 - Section 145

Citation: (2023) 08 GAU CK 0074

Hon'ble Judges: Mridul Kumar Kalita, J

Bench: Single Bench

Advocate: A. K. Gupta, S. Jahan

Final Decision: Disposed Of

Judgement

Mridul Kumar Kalita, J

1. Heard Mr. A. K. Gupta, learned counsel for the appellant. Also heard Ms. S. Jahan, learned Additional Public Prosecutor for the State of Assam.

2. This Appeal has been preferred under Section 374 (2) of the Code of Criminal Procedure, 1973, by the appellant Shri Dipen Rajkonwar, impugning

the judgment and order dated 13.06.2011, passed by the learned Sessions Judge, Dibrugarh in Sessions Case No. 160/2008, whereby the present

appellant was convicted under Section 304 Part-1 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for ten years and to

pay a fine of Rs. 10,000/-, and in default of payment of fine to undergo rigorous imprisonment for a period of another one year.

3. The appellant was also convicted under Section 324 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for two years

and to pay a fine of Rs. 1,000/-, and in default of payment of fine to undergo rigorous imprisonment for a period of another six months. It was directed

that both the sentences shall run concurrently.

4. The facts relevant for adjudication of this instant Criminal Appeal, in brief, are as follows:

(i) That on 22.04.2007, one Sri Uma Rajkonwar lodged an FIR before the Officer-in-Charge of Tinkhong Police Station, inter-alia, alleging that on

21.04.2007 at about 6.00 P.M., the appellant Sri Dipen Rajkonwar assaulted the son of the first informant, namely, Latu and the daughter-in-law of the

first informant, namely, Mainu Rajkonwar with a dao causing grievous injuries on their person and it is also stated in the FIR that when the wife of the

first informant, namely, Pramila Rajkonwar tried to intervene in the quarrel, she as well as the grandson of the first informant were also assaulted and

they also suffered grievous injuries on their person.

(ii) It is also stated that the injured persons were taken to the hospital, however, the daughter-in-law of the first informant Smti. Mainu Rajkonwar

succumbed to her injuries.

5. On receipt of the said FIR, Tinkhong P. S. Case No. 68/2007 was registered under Sections 326/302 of the Indian Penal Code and Sri Surya

Kumar Chetiya, Officer-in-Charge of Tinkhong Police Station took up investigation of the said case. Ultimately, on completion of the investigation,

charge-sheet was laid against the present appellant under Sections 326/302 of the Indian Penal Code. The present appellant faced his trial remaining

on bail. On 10.08.2008, after considering the materials on record and after hearing both sides, learned Sessions Judge, Dibrugarh framed charges

under Sections 324/326/302 of the Indian Penal Code against the present appellant and when the said charges were read over and explained to him, he

pleaded not guilty to be said charges and claimed to be tried. The prosecution side examined thirteen (13) witnesses during the trial. The present

appellant was also examined under Section 313 of the Code of Criminal Procedure, 1973, wherein he denied the incriminating evidence adduced

against him by the prosecution witnesses and has pleaded his innocence. During his examination under Section 313 of the Code of Criminal Procedure,

1973, the appellant had stated that it was the son of the first informant, namely, Latu, who first came to his courtyard brandishing a dao and started

scolding the present appellant and assaulted him and his wife causing injuries to him as well as his wife and when the daughter-in-law of the first

informant tried to intervene she also got injured due to brandishing of dao by Latu i.e., the son of the first informant. The appellant however, did not

adduce any evidence in his defense.

6. After completion of trial learned Sessions Judge, Dibrugarh, by the judgment, which has been impugned in this appeal convicted and sentenced the

present appellant in the manner as already described in paragraph nos. 2 & 3 hereinbefore.

7. Before considering the rival the submissions made by learned counsel for the appellant as well as learned Additional Public Prosecutor, let me go

through the evidence of the prosecution side which is available on record.

8.1 PW-1, Sri Uma Rajkonwar, who is the first informant of this case, has deposed that on the date of incident, at about 6.30 pm, he was in his

residence and his daughter-in-law was cooking rice and his son Latu was teaching his grandson (Kulaguti). At that time, the appellant Dipen shouted

from outside in front of the courtyard calling his son Latu to come out and therefore, his son Latu went outside after that he heard Latu shouting

“Kati le, Kati le” (I have been cut). On hearing the hue and cry the daughter-in-law and the wife of the PW-1 went outside to see as to what

happened they also took their grandson, Kulaguti along with them.

8.2 PW-1 has also deposed that he also heard shouts of his wife Pramila and his daughter-in-law Mainu and he also came out of his house. After

coming out he saw that his son Latu, wife Pramila and daughter-in-law Mainu were in injured condition and his grandson was also injured. He reached

there at the moment when his grandson was hacked by the present appellant. Thereafter, he informed the neighbors who gathered at the place and

thereafter, injured persons were taken to hospital at Dibrugarh, however, his daughter-in-law succumbed to her injuries on the way to hospital. PW-1

picked up his grandson and after assaulting the present appellant Dipen went back to his house.

8.3 PW-1 has also stated that his grandson and his wife were hospitalized for 15-16 days and on the next day of the incident he lodged the FIR which

is exhibited as Exhibit-1. He has also stated that the police came to the place of the incident and seized one kalam-katari (a long local knife) and also

seized one blood stained shirt and prepared seizure list and took his signature on the seizure list. The seizure list was exhibited as Exhibit-2, thereafter,

the statement of the PW-1 was also recorded under Section 164 of the Code of Criminal Procedure, 1973.

8.4 During cross-examination, PW-1 has stated that there used to be altercation between his daughter-in-law and wife of the appellant over trespass

of cattle in each other's land. He has answered in negative to a suggestive question by defense side that he stated before police that his son went

in front of the courtyard of the appellant and asked him to come out and thereafter, there was an altercation between them and his son was the first

who assaulted the appellant on his abdomen with a dao. He has also answered in negative to the suggestion that his son started the altercation with the

appellant in front of the house of the appellant and on hearing that his wife and his daughter-in-law went outside.

8.5 He had also denied that his son Latu assaulted the appellant on his abdomen with a dao and when he tried to further assault him, his (PW-1)

daughter-in-law as well as his wife tried to intervene and at that time, the dao which was being held by his son hit his wife, his daughter-in-law and his

grandson and thereby, they suffered injuries. He also denied that he had stated before police as both the appellant and his son were fighting with dao

he did not go near them out of fear.

8.6 PW-1 also stated that the appellant and his wife were also injured in the incident and both of them also took medical treatment. PW-1 has also

stated that four injured persons from their side along with the appellant and his wife were first taken to Naharini Hospital and as the appellant and the

grandson of PW-1 were having more injuries, they were taken to Dibrugarh Medical by an ambulance.

8.7 PW-1 has also stated that he has not seen the injuries of the appellant and he does not know how the injuries on the appellant and his wife were

caused.

8.8 PW-1 has also stated during cross-examination that the fight took place between Dipen (present appellant) and Latu (son of PW-1) and the

women folk of both the families tried to separate them and during the process they suffered injuries. He also stated that Material Exhibit-1 i.e., shirt

which was seized by the police is his shirt and it got stained with blood when he picked up his grandson. He has denied that the dao which was seized

by the police belongs to his son.

9. PW-2, Sri Padmeswar Rajkonwar, who is the neighbour of the PW-1 and as his land adjacent of the land of PW-1 has stated in his deposition that

police came to the residence of PW-1 on the day after the incident and after coming to know about arrival of police, he also went there and came to

know about the incident which happened on the previous day. He has also stated that the police has seized one blood stained shirt and prepared one

seizure-list over which his signatures were obtained. He has exhibited the said seizure-list as Exhibit-2. However, he has stated that he has not seen

the police seizing the kalam-katari from there. He has further stated that when the police inquired him about the incident he has stated that in front of

the courtyard of the present appellant, the Latu wielding a dao called the present appellant to come out of his residence. He has also stated that on the

day after the incident he came to know that the women folk of both the families got injured when they tried to separate Latu and the present appellant

when they were fighting with each other. He has also stated that the present appellant also suffered cut injuries on his abdomen and he had heard that

his intestine had protruded out.

10. PW-3, Sri Gopal Changmai, has stated that he came to know about the incident on the next day of the incident and when police came to the place

of incident and called him there. PW-3 has stated that when police was enquiring the family members of PW-1, he came to know that the appellant

had assaulted and cut Latu and his wife as well as his mother and his son. He also came to know that the appellant was also cut by Latu. He has also

stated that police recovered one kalam-katari and seized the same from the place of incident and one blood stained shirt was also seized from PW-1

and he signed the said seizure-list.

During cross-examination he has stated that prior to the incident there was an altercation between the women folk of both the houses, he was asked

some suggestive questions by the defence side, which was answered in negative by the PW-3.

11.1 PW-4, Dr. Netramoni Kakoti, who conducted the post-mortem examination on the dead body of Maina Rajkonwar @ Mainu (the daughter-in-

law of the PW-1). He has stated in his examination that he found following during his post-mortem examination:

External appearance: One female dead body of average built, dark brown complexion, wearing one chadar, one blouse, one bra, one mekhela and one

petticoat eyes are closed, mouth closed body cool on touch, rigor mortis developed all over the body. Body looks pale; anus & vagina all are healthy.

Blood stains present all over the body and wearing cloths, at places.

Injuries:

Ã, (1) Incised wound of size 6cm X 2cm present over the left parietal region 3 cm midline placed obliquely where the underline outer table of left

parietal bone cut.

(2) Abrasion, size 4 cm X 1 cm present over the left side of neck;

(3) Incised wound, size 3 cm X 1 cm present over the back of the right upper chest, 8 cm away from midline and 4 cm below from tip of left shoulder

joints.

(4) Stab wound (punctured) 3 cm X 1 cm present, lateral side of upper right abdomen at the level of mid auxiliary line, 7 cm above from right anterior

superior iliac-spine passes through the skin, soft tissues, muscles, vessels, peritoneum, right lobe of liver, diaphragm, pleura and right lung; both pleural

& peritoneum cavity contain about 3 Liter of liquid and clotted blood and the wound directed forward upward & right to left;

(5) Incised wound of size 16 cm X 2.5 cm present back of the abdomen midline 10 cm above from Lumbo-sacral joint and 25 cm away from tip of 7th

cervical vertebrae where the skin, soft tissues, muscles, vessels cut

(6) Incised wound of size 5 cm X 1.5 cm present left side of the buttock, later side in the muscle deep.

Thorax : Walls, ribs & cartilages & Larynx & trachea, pericardium & heart vessels all are healthy.

Lungs : Right lung injury as described. Left lung no injury detected Muscles, Bones & Joints: Injuries as described, others i.e. disease deformities not

detected.

Cranium & Spinal canal : Scalp and skull as described

Vertebrae healthy

Membrane healthy

Brain healthy

Spinal cord not examined

Abdomen : Walls & Peritoneum as described

Mouth, pharynx and oesophagus all are healthy.

Stomach & its contents:

Healthy about 150 gms of partly digested rice, mixed with dal & vegetables having no suspicious smell.

Small intestine & its contents:

Healthy, contains digested food particles

Large intestine & its contents:

Healthy, contains focal matters & gases.

Liver : As described

Spleen : Healthy

Kidneys : Pale

Bladder : Healthy & empty

11.2 He has also stated that in his opinion death was due to shock and haemorrhage resulted from the injuries as described and all the injuries were

ante-mortem in nature. He has also stated that injury nos. 1, 3, 5 were caused by sharp heavy weapon, injury no. 4 was caused by pointed sharp

weapon and injury no. 2 was caused due blunt force impact and homicidal in nature and time of death 24 to 36 hours approximately prior to the post-

mortem examination. He exhibited post-mortem report as Exhibit-3. His cross-examination was declined by the defence side.

12.1 PW-5, Smti. Pramila Rajkonwar, who is the mother-in-law of the deceased has stated that the present appellant is her nephew and on the date of

incident she was in her residence. She has stated that her son Latu, the daughter-in-law Mainu and her husband (PW-1) were also in her residence, at

that time, the present appellant came in front of the courtyard and called his son "come this side" and her son went outside. After her son went

outside, she heard altercation and hue and cry outside her residence and she along with her daughter-in-law and her grandson came out. PW-5 has

stated that she saw cut injury on the head of her son at this they started hue and cry and the present appellant was holding a dao in his hand and when

they started shouting, the appellant started brandishing dao which he was holding in his hand, during which the dao hit the head of PW-5. PW-5 has

also stated that her daughter-in-law was carrying her son in her lap. She has further stated that name of her grandson is Pallabhjyoti and who also

suffered cut injuries on his cheek. She also stated that her daughter-in-law suffered injuries on her back, head, shoulder and abdomen. Later on, the

injured were taken to the hospital and her daughter-in-law succumbed to her injuries. She has also stated that she herself along with her son and

grandson were admitted in hospital for treatment for about 9 days and thereafter, they used to come to the hospital for treatment.

12.2 During cross-examination PW-5 has stated that earlier there used to be oral altercation between her daughter-in-law and wife of the present

appellant over trespassing of cattle into each other land. She has denied that she had stated before police that on the day of incident, her son went to

the courtyard of the appellant, wielding a dao and challenged the appellant to come out of his house and thereafter, he assaulted the appellant on his

abdomen.

12.3 PW-5 has stated that the present appellant and his wife both were also injured and they also took treatment in hospital. She has stated that she is

unaware of as to how they sustained injuries on their person. She has also stated that she had heard that due to the injuries suffered by the present

appellant, his intestine had protruded out. She was asked many other suggestive questions by the defence side which were all answered in negative by

her. She has also denied the fact that she was not injured by the dao which was wielded by the appellant.

13.1 PW-6, Latu @ Monbhai Rajkonwar, has deposed that on the day of incident, he was in his residence along with his son and in the evening, the

appellant called him in front of his courtyard and on this, the PW-6 went out of his residence. He has stated that the residence of appellant is adjacent

to his residence. He has deposed that when he came out the appellant who was holding a long meat dao, assaulted him on his head, saying that

“Tor besi hoi se” (You have crossed your limits). On this, PW-5 raised alarm and became almost unconscious. On hearing hue and cry, his

mother, his wife carrying his two years old son and his father came out. However, PW-5 has deposed that he does not know what happened

thereafter, and after sometime when he regained consciousness he saw his mother and his wife Mainu and his son were in injured condition.

Thereafter, nearby people came and took them to Naharini Hospital and from there to Dibrugarh Medical College Hospital. He has also stated that his

wife succumbed to her injuries and they were treated in hospital for about 8 days.

13.2 During cross-examination he has denied a suggestion that he did not stated to police that when the appellant called him in front of his courtyard

and when he went out, the appellant stated to him “Tor besi hoi se” (You have crossed your limit) and thereafter, gave him blow of meat dao

which he was holding.

13.3 PW-6 has also stated at the time of incident that it was dark and after getting injuries on his head, he fell down on the ground. PW-6 has also

stated during cross-examination that after the incident when he went to his house he saw his mother, his wife and his son in injured condition,

however, he had not seen how they sustained the said injuries as at that time he was in an unconscious state. He has also stated that appellant and his

wife also suffered injuries, however, he is not in a position to say, how they sustained the said injuries.

13.4 PW-6 has denied the suggestion that on the day of incident, he came to Dibrugarh and after returning back, his wife reported him about her

quarrel with the wife of the appellant and on this, he got enraged and he went to the house of the appellant wielding a dao and caused cut injuries on

his abdomen. He has also denied the suggestion that when the wife of the appellant tried to intervene, she was also assaulted by him and he also

denied the suggestion that when his mother and his wife tried to intervene they were also injured by the dao which was wielded by the PW-6.

14. PW-7, Jalil Borua, has deposed that on the day after the incident police came to the house of Latu and seized one dao resembling a Kalam-katari

and one blood stained shirt and prepared seizure-list. Exhibit-2 is the said seizure-list. He has stated that he is unaware as to how the wife of Latu

expired.

During cross-examination PW-7 has stated that when the police went to the residence of Latu, he heard that there was a fight between Latu and the

present appellant and Latu went to the house of present appellant and when the family members of the present appellant and Latu tried to intervene

they also suffered injuries.

15. PW-8, Sri Monoranjan Changmai, has stated that on the day after the incident he came to know about the death of the wife of Latu and

thereafter, he went to the house of the Latu where police seized one dao and one blood stained shirt and took his signature on the seizure-list. He has

exhibited the seizure-list as Exhibit-2. He has also stated that he came to know that the wife, mother as well as the appellant and his wife also

suffered injuries and later on, the wife of the PW-6 (Latu) succumbed to her injuries.

During his cross-examination, he has stated that he only heard that there was a fight between Latu and the present appellant and when their family

members tried to intervene, they also suffered injuries during fight.

16.1 PW-9 Sri Bidya Rajkonwar has stated that at the time of the incident i.e., about 6.30 pm he was in his house and at that time father of Latu (PW-

1) came to his residence and informed that Latu and Dipen were fighting. He immediately came to the place and saw that the appellant, wife of the

appellant (Alie), Latu, wife of Latu (Mainu), mother of Latu (Pramila Rajkonwar), son of Latu (Kulaguti) were in injured condition. Thereafter, the

people who gathered there took the appellant and his wife to the house of his brother Promod and they also took the PW-6 (Latu) and his family

members to the house of PW-6 and thereafter, all the injured persons were taken to Naharini Hospital and from Naharini Hospita they were sent to

Dibrugarh Medical Hospital. However, Mainu Rajkonwar succumbed to her injuries.

16.2 During cross-examination, PW-8 has stated that he does not know as to who initiated the fight. He has also stated that he has also not seen that

the intestine of the present appellant got protruded, however he had seen a cloth tied to his abdomen. He has also stated that when the appellant was

admitted in the hospital, he was operated upon immediately. He has denied the suggestion that he stated before police that the Latu Rajkonwar PW-6

wielding a dao came to the residence of the present appellant and asked him to come out and as soon as he came out there was an altercation and the

PW-6 assaulted the present appellant on his abdomen with a dao which he was wielding.

17.1 PW-10, Dr. Sadagar Deori, has stated in his deposition that on 21.04.2007 when he was working as Registrar of Surgical Unit No. IV in Assam

Medical College, Dibrugarh, he examined Pramila Rajkonwar (PW-5), wife of Uma Rajkonwar and found one incised wound on left parietal of skull,

size 4" long and 1" deep, active bleeding present and edges of the injuries were clear. C. T. scan done on the patient and found to be normal.

17.2 On that day he examined Kulaguti Rajkonwar, son of Latu Rajkonwar and found following injuries:

Injury: -

1. One incised wound extending from the angle of mouth to pinna and mastoid exposing mouth cavity and ascending ramus of mandible (left) cut with

profuse bleeding and shock edges clean cut mouth-size 8" long and 1" deep.

Impression : -

The injuries were fresh, grievous and caused by sharp edged heavy weapon

17.3 He also examined on the same day one Latu Rajkonwar son of Uma Rajkonwar and found following injuries:

1. Three numbers of incised wounds on left fronto-parietal region of skull, size 3", 4" and 2" x bone-deep with active bleeding and clean cut edges.

Impression : - Injuries were fresh, simple and caused by sharp cutting weapon.

He exhibited the injury report of Smti. Promila Rajkonwar as Exhibit-6, injury report of Kulaguti Rajkonwar as Exhibit-7 and injury report of Latu

Rajkonwar as Exhibit-8.

17.4 During cross-examination, PW-10 has stated that Dipen Rajkonwar and Smti Alie Rajkonwar were also examined on the same day in Surgical

Unit IV with history of assault on 21.04.2007 on examination, Dipen Rajkonwar required emergency operation for spleen injury, diaphragm mesocolon

injury repair and after operation the injuries were repaired and he was discharged on 04.05.2007.

He exhibited the discharge certificate of Dipen Rajkonwar as Exhibit-A. He has also stated that Smti Alie Rajkonwar was also admitted in Surgical

Unit No. IV for injuries of multiple scalp injury with history of alleged assault. She was treated as indoor-patient and discharged on 27.04.2007. He

exhibited her discharge certificate as Exhibit-B. He also stated that her injuries were simple in nature.

18. PW-11, Sri Nareswar Gohain, has deposed that on 22.04.2007 when he was posted as ASI of Police of Barbari of police outpost, at about 8.35

A.M. in the morning, Doctor Binod Gohain of Assam Medical College, Dibrugarh Casualty Department informed him that on 22.04.2007 at about 1.30

A.M., one Mainu Mahanto was brought to the hospital and she succumbed to her injuries. On receiving the said information, he made a GD Entry

bearing GD Entry No. 492 dated 22.04.2007 of Barbari outpost and he immediately went to the Casualty Department of Assam Medical College

Hospital and conducted the inquest over the dead body of the Mainu Rajkonwar. He exhibited the inquest report as Exhibit-4 and later on, he prepared

requisition for post-mortem examination of the dead body and his cross-examination was declined by the defense side.

19.1 PW-12, Sri Surya Kumar Chetiya, who is the Investigating Officer of Tinkhong P. S. Case No. 68/2007, has deposed that on 21.04.2007 at about

7.50 P.M., appellant Dipen Rajkonwar and his family members appeared in the Police Station and GD Entry was made and they were sent to the

hospital for treatment. PW-11 has also stated that on 22.04.2007, one Shri Uma Rajkonwar (PW-1) lodged an FIR, which was registered and PW-11

took up the investigation himself.

19.2 On receipt of the FIR, PW-12 went to the place of occurrence of offence and prepared one rough sketch map which is exhibited as Exhibit-9

and took statement of witnesses there and seized one kalam-katari and one blood stained shirt from the place of occurrence of offence. He also took

steps for getting statement of witnesses namely, Uma Rajkonwar and Bidya Rajkonwar recorded under Section 164 of the Code of Criminal

Procedure. He has further stated that as the appellant was also injured he could not be arrested immediately. On completion of investigation, he laid

the charge-sheet under Section 326/302 of the Indian Penal Code which is exhibited as Exhibit-10.

19.3 PW-12 has also stated in his deposition that during investigation Uma Rajkonwar (PW-1) has stated before him that on the date of incident at

about 6.00 P.M. when he was in his residence his son Monbhai @ Latu went in front of the courtyard of the present appellant and asked him to come

out and when the appellant came out of the residence, there was an altercation between them and thereafter, his son assaulted the appellant with a

dao causing a cut injury on his stomach. He had also stated that the PW-1 had stated during investigation that as there was a fight between the

appellant and his son, he was afraid to go near them. He had also stated that PW-1 had not stated before him that when appellant called his son

outside and when his son went outside he heard his son shouting "I am being cut" (Kati le Kati le).

19.4 PW-12 has also stated that the witness Padmeswar Rajkonwar (PW-2) had stated before him during investigation that when Latu Rajkonwar

went in front of the courtyard of the present appellant and called the present appellant out of his residence and when the present appellant came out,

the PW-6 (Latu Rajkonwar) assaulted the present appellant with a dao. PW-6 has also stated that Sri Gopal Changmai (PW-3) stated that when the

appellant came out of his residence, Latu assaulted him with the dao causing cut injuries on his abdomen, at that time wife of the appellant came out

and has the intestine of the appellant have protruded out, she tied one lungi and one gamosha (a traditional thin cotton towel) around the abdomen of

the present appellant and when the wife of the present appellant was shouting for help Latu also assaulted her with a dao.

19.5 PW-12 has also stated that the witness Pramila Rajkonwar (PW-5) had stated that during investigation that at about 6.00 P. M. when her

daughter-in-law said something to her son, he went out wielding a dao in his hand and called the present appellant by naming him from in front of his

courtyard and when the present appellant came out and used some slang language her son assaulted with the dao causing injury on his stomach. PW-

12 has also stated that Pramila (PW-5) had not stated to him during investigation that the present appellant called Latu in front of his residence. It is

also stated by the PW-12 that PW-6 Latu had stated during his investigation, to him that in the evening at about 6.00 pm, when he went to the

courtyard of present appellant to ask him he assaulted him with a dao and thereafter, he again came back to his residence and brought a dao and

assaulted him causing cut injury on him with a dao and when the wife of the present appellant tried to intervene she also suffered injuries. The

Investigating Officer has also stated that the present appellant and his wife Alie Rajkonwar also suffered injuries on their person.

20.1 PW-13, Md. Aatur Rahman, has stated that on 11.05.2007 he was posted as Bench Assistant in the Court of Judicial Magistrate Sri A. C.

Sharma and on that day the statement of Uma Rajkonwar and Bidya Rajkonwar was recorded by the Judicial Magistrate. He exhibited the statement

recorded under Section 164 of the Code of Criminal Procedure of Sri Uma Rajkonwar as Exhibit-11 and statement of Bidya Rajkonwar recorded

under Section 164 the Code of Criminal Procedure as Exhibit-12.

21. During his examination under Section 313 of the Code of Criminal Procedure, 1973, the present appellant had stated that it was Latu who went to

his courtyard and started scolding him by wielding a dao in his hand and he (Latu) had assaulted him (appellant) causing injuries on his abdomen and

when his wife (Alie) intervened she was also assaulted by Latu. The appellant has also stated that when the wife of the Latu and his mother tried to

intervene and tried to stop Latu they also got injured. The appellant has denied that he had assaulted Latu, and his family member. He has also denied

that the seized Kalam-katari belong to him. He has however admitted that there was an altercation between him and Latu, wherein Latu assaulted him

and his wife with a dao and his family members when they tried to intervene they also sustained cut injury.

22. Mr. A. K. Gupta, learned counsel for the appellant has submitted that learned Sessions Judge, Dibrugarh ignored material contradiction in the

testimony of PW-1, PW-5 and PW-6 and came to the finding of guilt of present appellant only on the basis of assumptions. It is also submitted that

though the doctor, i.e., PW-10 has categorically stated about the nature of injuries found on the appellant and his wife, learned Sessions Judge

erroneously came to the finding in paragraph No. 42 of the impugned judgment that the factum of assault on accused (present appellant) and his wife

remained unproved. It is also submitted by the learned counsel for the appellant that learned Sessions Judge, Dibrugarh has failed to consider and deal

with the explanation given by the present appellant during his examination under Section 313 of the Code of Criminal Procedure, 1973. It is also

submitted by learned counsel for the appellant that PW-1, PW-5 and PW-6 are related witnesses and have not narrated true facts while deposing as

witness before the Court during trial, however, they had stated the true facts when their statements were recorded under Section 161 of the Code of

Criminal Procedure, 1973, by the Investigating Officer. Learned counsel for the appellant has also submitted that during investigation stage both PW-1

& PW-6 has stated before the Investigating Officer that it was their son Monbhai @ Latu (PW-5) who went to the courtyard of the present appellant

wielding a dao and caused cut injury on the stomach of the present appellant and when the wife of the present appellant tried to intervene, she had

also suffered injuries. Learned counsel for the appellant has submitted that this fact has been proved by the appellant by cross-examining the PW-12

(Investigating Officer), who has affirmed the above facts during his cross-examination. Learned counsel for the appellant has submitted that while

deposing before the Court as prosecution witnesses, PW-1, PW-5 and PW-6 have suppressed the real facts about the genesis and origin of the

incidence which lead to death of daughter-in-law of PW-1 and injuries to five persons including the appellant and his wife. Learned counsel for the

appellant has submitted that when the prosecution side has suppressed the genesis and origin of the incidence and have failed to explain the injuries to

the appellant and his wife, the only conclusion which can be arrived at is that the prosecution has not come up with true version of occurrence and

under such circumstances the appellant is entitled to get benefit of doubt. In support of his contention, learned counsel for the appellant has relied up

ruling of Hon'ble Supreme Court of India in "Lakshmi Singh and Others Vs. State of Bihar", reported in (1976) 4 SCC 394.

23. Learned counsel for the appellant has also submitted that though one dao is stated to be seized in connection with this case by the Investigating

Officer, the evidence of PW-7 shows that the said dao was seized from the house of the injured Latu and there is no evidence to show that the seized

dao belong to the present appellant. Learned counsel for the appellant has also stated that there is no evidence on record to show as to how deceased

Mainu sustained to her injuries. It is submitted that learned Sessions Judge, Dibrugarh in paragraph No. 38 of the impugned judgment has only

assumed that the injuries on Latu and stab injuries on deceased Mainu could not have been caused due to brandishing of dao by Latu, said finding,

according to learned counsel for the appellant is not based on any evidence and merely on the basis of assumption by the learned Trial Court and

hence, it is submitted that the conviction of present appellant is liable to be set aside.

24. On the other hand, Ms. S. Jahan, learned Additional Public Prosecutor has submitted that though there appears to be some contradiction in the

testimony of prosecution witnesses, it does not go to the genesis of the alleged offence as to how Mainu (wife of PW-6) expired and as to how PW-5,

PW-6 and Kulaguti (son of PW-6) suffered injuries. Learned Additional Public Prosecutor has also submitted that the contradiction in the testimony of

prosecution witnesses was not brought on record according to procedure prescribed under Section 145 of the Indian Evidence Act and to support her

contention, she has relied upon a ruling of Hon'ble Supreme Court of India in V.K. Mishra and Others Vs. State of Uttarakhand reported in

(2015) 9 SCC 588, wherein Hon'ble Apex Court has observed as follows:

“19. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the

attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used.

While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is

intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and

this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no

need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his

attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it

is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the

purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose

about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the

maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence

wanted to contradict him, then the court cannot suo motu make use of statements to police not proved in compliance with Section 145 of the Evidence

Act that is, by drawing attention to the parts intended for contradiction.

Learned Additional Public Prosecutor has submitted that the evidence of PW-1, PW-5 and PW-6 shows that it was the appellant who came in front of

the courtyard of the PW-6 and called him out and it was the appellant, who by brandishing a dao, which he was holding in his hand caused injury to

PW-5, PW-6, Mainu (deceased) and the grandson of PW-1. Learned Additional Public Prosecutor also submitted that the evidence of PW-10

(doctor) shows that PW-5, PW-6 and the Kulaguti (grandson of PW-1) suffered injuries which were caused by sharp cutting weapon and the

evidence of PW-4 (doctor who conducted the post-mortem of the deceased) also shows that deceased suffered multiple injuries caused by sharp

heavy weapon, which also corroborates the testimony of PW-5. Learned Additional Public Prosecutor submitted that as PW-5 has categorically stated

that after coming out of her residence and seeing her injured son (PW-6), when she started shouting, the appellant started brandishing a dao which he

was holding and caused injuries to her, her daughter-in-law and her grandson and as PW-5 was herself injured, there remains no doubt that she was

present at the place of occurrence when the alleged offence was committed and hence, there is no reason to disbelieve her testimony.

25. Learned Additional Public Prosecutor also submitted that as the PW-5 and PW-6 are themselves injured witnesses and whose evidence has been

corroborated by medical evidence, their testimony may not be brushed aside merely on the ground of minor contradiction which does not affect the

core of their testimony. In support of her submission, she has cited a ruling of Hon'ble Supreme Court of India in "Balu Sudam Khalde and

Another Versus State of Maharashtra" reported in 2023 SCC OnLine SC 355, wherein the Hon'ble Apex Court has observed as follows:

26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be

kept in mind:

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his

deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and

falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or

embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory

with passage of time should be discarded.

27. In assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is

possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to

by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations,

circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit

the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. Although in cases where the plea of

the accused is a mere denial, the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea

or put forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it

will also have to be taken into account while assessing the value of the prosecution evidence.

Learned Additional Public Prosecutor has thus, submitted that the impugned judgment of conviction and sentence to the present appellant does not

justify any interference by this Court in the instant appeal.

26. I have considered the submissions made by learned counsel for both the sides as well as gone through the evidence available on record

meticulously.

27. Though, the evidence on record shows that death of Maina Rajkonwar @ Mainu (daughter-in-law of PW-1) was caused due to shock and

hemorrhage which resulted from injuries sustained by her, which were ante-mortem in nature and three injuries namely, injuries Nos. 1, 3 & 5 were

caused by sharp heavy weapon, one injury, namely, injury no. 4 was caused by pointed sharp weapon and injury no. 2 was caused by blunt force

impact and the injuries were homicidal in nature, however, it is to be seen whether the evidence on record is sufficient to come to the finding that the

said injuries were caused by the present appellant. Similarly, the evidence on record also shows that the PW-5 herself, PW-6 and Kulaguti Rajkonwar

(grandson of PW-1) suffered cut injuries on their person which were caused by sharp cutting weapon, however, here also it is to be seen, as to

whether there is sufficient evidence on record to come to the finding that the said injuries were caused by the present appellant.

28. Out of the thirteen number of prosecution witnesses examined by the prosecution side, PW-1, PW-5 and PW-6 have stated to have witnessed the

present appellant brandishing a dao which caused injuries to the deceased as well as the injured persons. Let us see, how far their testimony is

reliable. Though, the learned Additional Public Prosecutor has submitted that the contradiction in the testimony of prosecution witnesses was not done

as was required under the law, however, it appears that, during his cross-examination, the attention of PW-1 was brought to the statement which he

had given to the Investigating Officer during investigation (as discussed in paragraph nos. 8.4 and 8.5 of this judgment) and the Investigating Officer,

while deposing as PW-12 has confirmed (as discussed in paragraph no. 19.3 of this judgment) that PW-1 had stated to him that it was his son

Monbhai @ Latu who went in front of the courtyard of appellant as asked him to come out and when the appellant came out of his residence, an

altercation took between them and his son assaulted the appellant with a dao causing cut injury on his stomach. This appears to be a major

contradiction in the testimony of PW-1 and it appears that he intentionally suppressed the genesis of occurrence while deposing as a witness during

trial. It also appears that though PW-1 had stated that the appellant and his wife were also injured in the incident, however, he showed ignorance

regarding the cause and manner of injuries sustained by the appellant and his wife. It appears that PW-1 has given a different version before the

Investigating Officer (PW-12) during investigation from what he has stated during trial, which makes his testimony unreliable.

29. As regards, PW-5 is concerned, in her case also, as seen in paragraph no. 12.2 of this judgment, it was also brought to her attention, during her

cross examination, that she stated before police that her son went to courtyard of the appellant wielding a dao and challenged the appellant to come

out of his house and thereafter, assaulted the appellant on his abdomen, which she denied. However, the Investigating Officer (PW-12) has stated in

his cross-examination (as discussed in paragraph no. 19.5 of this judgment) that PW-5 had stated during investigation that on the day of incidence, at

about 6.00 pm, when her daughter-in-law said something to her son, he went out wielding a dao in his hand and called the present appellant, by naming

him from in front of his courtyard, her son assaulted the present appellant with a dao causing injury on her stomach. This is again a major contradiction

which the PW-5 suppressed in her testimony before this Court making her testimony unreliable.

30. As regards, PW-6 is concerned he has also stated during his cross-examination (as discussed in paragraph no. 13.3 of this judgment) that the

appellant and his wife also suffered injury, however, he could not say how they sustained the said injuries.

31. We have seen from the testimony of PW-10 (as discussed in paragraph no. 17.4 of this judgment) that the present appellant also suffered from

injuries on his abdomen and he required emergency operation for spleen injury and diaphragm mesocolon injury repair and was admitted in hospital

from 21.04.2007 (date of alleged incident) to 4.05.2007. Similarly, the wife of present appellant Smti. Alie Rajkonwar also suffered multiple scalp

injury and was admitted in hospital till 27.04.2007. This shows that the appellant also sustained serious injuries during the incident and his wife also

sustained injuries, however, in their evidence during trial the PW-1, PW-5 and PW-6 have tried to suppress this fact and failed to explain the serious

injuries sustained by the present appellant, which makes their testimony doubtful. More so, when PW-12 (Investigating Officer) has deposed that,

during investigation PW-1 and PW-5 have stated that it was Latu (PW-6) who first attacked the appellant with a dao causing injuries to him on his

abdomen, it is clear that PW-1 and PW-5 have suppressed true version of the incident. Hon'ble Supreme Court of India in *Lakshmi Singh Vs.*

State of Bihar (Supra) has observed as follows:

"12. It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the

occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:

“(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the

prosecution

case. Hon'ble Supreme Court of India has also observed that though there may be

cases where non-explanation of injuries by prosecution side may not

affect the prosecution case, say where the case is such where the injuries sustained by the accused are minor and superficial and where the evidence

is so clear and cogent, so independent and disinterested, so probable consistent and credit worthy that it far outweighs the effect of omission on the

part of the prosecution to explain the injuries. The instant case is, however, not such a case, as we have seen herein before that there are material

contradiction in the testimony of main prosecution witnesses, namely, PW-1, PW-5 and PW-6 which renders their testimony unreliable. Moreover, in

the instant case, the injuries sustained by the present appellant were serious in nature which required immediate surgical intervention and

hospitalization of appellant for about thirteen days. As, during trial, the prosecution side has failed to explain the serious injuries sustained by the

appellant at the time of occurrence, which only leads to the inference that the said prosecution witnesses, namely, PW-1, PW-5 and PW-6 have

suppressed the genesis of the offence and have not presented the true version during trial making their testimony unreliable of any credence.

32. What is also important to note that though the evidence on record suggest that there was an altercation between the present appellant and the

PW-6 at the time of incident when PW-5, PW-6, the deceased Maina Rajkonwar @ Mainu, Kulaguti (grandson of PW-1), the appellant and his wife

sustained injuries by sharp cutting weapon, however, it is seen that only one kalam-katari (a long blade cutting knife with curved tip used for pruning

tea shrubs) with a bamboo handle was seized by the Investigating Officer by preparing seizure-list which was exhibited as Exhibit-2. Thus, it appears

that only one weapon of offence which was used during the incident was seized during investigation. What is more important to note that though the

seizure list was exhibited as Exhibit-2, however, the said kalam-katari was not exhibited by any of the prosecution witnesses and same was not

produced before the Court during trial. Neither there is any evidence to show that to whom said kalam-katari belong to or who was wielding the said

kalam-katari, as to whether it was the present appellant or the PW-6 (Latu). PW-7 has stated in his testimony that the kalam-katari was seized by the

house of Latu (PW-6). Thus, there is no evidence on record to suggest that the kalam-katari which was seized and which the prosecution failed to

produce and exhibit during trial, was used by the present appellant in committing the alleged offence.

33. We have discussed herein before that though PW-5 and PW-6 were themselves injured in the incident, however, considering the material

contradiction in their testimony and considering the fact that they may not be treated as independent and disinterested witnesses and that they

appeared to have suppressed the genesis and origin of occurrence and have not presented the true version of the incident, their testimony, in the

considered opinion of this Court, is not safe to be relied upon. Further, we have also discussed that considering the fact that only one kalam-katari

(weapon of offence) was stated to have been seized which the prosecution side has failed to produce during trial and that there is no evidence on

record to suggest that the present appellant had used the seized kalam-katari for inflicting the injuries on the deceased as well as the injured person, it

is not safe to rely on the prosecution's story to convict the present appellant.

34. In view of above, the finding of learned Trial Court merely, on the basis of assumption that injuries sustained by Mainu (deceased) and Latu (PW-

1) could not have been caused by Latu himself even if it is accepted that he was brandishing a dao himself is not sufficient to convict the present

appellant, in absence of any cogent evidence available on record to show the culpability of the present appellant. It appears that during the incident

there was an altercation (melee) and only one kalam-katari is stated to have been seized (though same was not produced and exhibited), and it is also

there on record that the women folk of both the families tried to intervene. Anything could have happened during such a melee, however, in absence

of cogent evidence which establishes the genesis of the occurrence and the facts which had actually occurred during such incident where

unfortunately the daughter-in-law of PW-1 died and five other persons, including the present appellant, sustained injuries, the conviction of present

appellant merely on the basis of assumption is not sustainable and he is entitled to get benefit of doubt under the facts and circumstances of this case.

35. In view of discussions and reasons stated in foregoing paragraph, the conviction and sentence of the present appellant, namely, Sri Dipen

Rajkonwar by the judgment, which is impugned in this appeal, is hereby set aside and he is acquitted of charges under Section 304 Part-I/324 of the

Indian Penal Code and is set at liberty forthwith unless required in connection with any other case.

36. This appeal is accordingly, disposed of.

37. Send back the case record of Sessions Case No. 160/2008 along with the connected files and a copy of this judgment to the Court of learned

Sessions Judge, Dibrugarh.