

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 1521 of 2000

Baneshwar Mahato

-Vs-

Bishnupada Mahato & Anr.

For the Petitioner : Mr. Aritra Bhattacharyya

For the Opposite Party No.1 : Mr. Subhadeep Maitra

For the State : Mr. Avishek Sinha

Judgment on : 24.02.2026

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioner against the order dated 06.05.2000 passed by the Learned Additional Sessions Judge, Purulia in Criminal Appeal No.28 of 1996 (G.R. Case No.1173/90 & T.R. No.22/92), acquitting all the 8 co-accused of all the charges but confirming the order of conviction and sentenced passed by the Learned Judicial Magistrate, 3rd Court, Purulia on 24.06.96 convicting the petitioner under Section 148 read with Section 236 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for 2 years and to pay a fine of Rs.1000/- in default to suffer further rigorous imprisonment of 3 months

under Section 326 of the Indian Penal Code, no separate sentence had been passed under Section 148 of the Indian Penal Code and also directing that half of the entire amount of fine if realized be paid to the injured i.e. Opposite Party No.1 by way of compensation.

2. The prosecution case precisely stated on 08.08.1990 at about 09:30 to 10:00 a.m., the 9 accused persons including the petitioner being armed with deadly weapons and by forming an unlawful assembly trespassed into the '*Khamar Bari*' of the opposite party no.1 and started felling bamboos. On protest by the opposite party no.1, the petitioner and others surrounded him and severely assaulted him and threatened him with dire consequences. The petitioner assaulted the opposite party no.1 with '*farsa*' on his left hand causing a severe injury. The opposite party no.1 lodged a complaint at Purulia P.S. being Purulia Police Station Case No.204 of 1990 dated 08.08.1990.
3. On 03.04.1992 the Learned Trial Court framed charges against the present petitioner and other alleged offenders under Sections 326/149 of the Indian Penal Code read with Section 148 of the Indian Penal Code, read with Section 324/149 of the Indian Penal Code.
4. In order to prove its case, the prosecution had examined as many as 6 witnesses while the defence examined as many as 3 witnesses.
 - a) PW-1, sister of the de-facto complainant Bishnupada Mahato, deposed that all the 9 accused persons were cutting away bamboo trees from their land. The opposite party no.1 protested and Deben Mahato

assaulted him on the left hand with a *farsa* and the appellant assaulted him on the right hand with a *farsa* almost chopping off his right thumb. Then, the accused persons assaulted her with stones, fists and blows.

In her statements to the police under Section 161 of Cr.P.C. stated that the appellant assaulted the opposite party no.1 with a *farsa* on his left thumb which was almost chopped off.

In her cross-examination stated that the accused persons cut 6/7 bamboo. She did not find any injury on the persons of the accused.

- b) PW-2 deposed many villagers came to the spot during the occurrence and corroborated the evidence PW-1. The accused cut 24 bamboo trees. She admitted that the accused persons filed a case against them for the self-same incident. She did not know if the accused persons suffered any injury during the incident.

In her statements to the police under Section 161 of Cr.P.C. stated that the appellant assaulted the opposite party no.1 with a *farsa*, almost chopping off his left thumb.

- c) PW-3, the de-facto complainant deposed there was a land of Jyoti Mahato adjacent to their Khamar Bari and the accused were cutting trees from the southern side of his Khamar Bari, on being assaulted by Deben Mahato and the appellant, he rushed to the P.S. with his right thumb almost chopped of. His father drafted the complaint. and he

signed it by his left hand. He further deposed that Dr. Pakrashi medically treated him and amputated his thumb.

In his cross-examination he stated that Jyoti Mahato raised a wall. They filed proceedings under Section 144 of the Cr.P.C. but they lost the case. He admitted that he was an accused in the counter case for the selfsame incident. The said case was pending before the Learned Magistrate, 2nd Court, Purulia. He did not find any injury on the persons of any of the accused. He did not find any villagers at the P.O. He tried to snatch the weapons from the hands of the accused persons. He did not state to have told the Doctor (PW-4) about the history of his injury.

- d) PW-4 Dr. Pakrashi deposed that the opposite party no.1 told him that at about 10:20 a.m., the appellant, Deben Mahato, Shibu, Yudhistir assaulted him with farsa.

In his cross-examination stated that he had not brought the injury register in Court. He did not ampute the thumb of the opposite party no.1 and he did not see what was the condition of that injury before amputation.

- e) PW-5, Officer-in-Charge, Purulia P.S. deposed that on 08.08.1990 he received a written complaint of the opposite party no.1 and started Purulia P.S. Case No.204/90.

In his cross-examination stated that there was also a counter case, over the selfsame incident, being Purulia P.S. Case No.205/90.

f) PW-6, Jeeran Chakraborty, S.I. of Police, deposed that during investigation he collected the X-ray plate of the injured. The counter case was under Section 326 of the Indian Penal Code, the dispute originated from the construction of a wall.

5. The complaint was lodged by the opposite party no.1 on 08.08.1990. The distance between the P.O. and P.S. was 8 km. PW-3 told PW-4 that he was assaulted at 10:20 a.m. He deposed that being hurt, he rushed to the P.S. PW-5 and PW-6, two police officers had not state that the father of opposite party no.1 went to P.S. and wrote the complaint PW-5 and PW-6 had not deposed that the right thumb of the opposite party no.1 was almost chopped off and the same was stated in the complaint.

6. The de-facto complainant and his associates being armed with deadly weapons arrived to demolish the wall constructed by Jyoti Mahato and assaulted him Jyoti Mahato and Deben Mahato. DW-1 was the Bench Clerk of the Court of the Learned C.J.M. Purulia who produced the injury report of Jyoti Mahato and Deben Mahato. DW-4 was Dr. Ajoy Kumar Pakrashi, who deposed on 08.08.99, he examined Jyoti Mahato and found cut injuries on his scalp and other injuries. He also examined Deben Mahato and found injuries on his body including scalp.

7. The Learned Advocate for the petitioner submitted that –

- i. PW-1 namely Upani @ Astami Mahato and PW-2 namely Pratima Mahato being the sisters of the opposite party no.1 had deposed that at the relevant time, Kiriti, Bishnu, Pratima and herself were present

in their father's house and at that point of time the accused persons were cutting wood. On hearing the sound of cutting trees they came out and found that the accused persons along with the present petitioner were cutting trees on their land. The opposite party no.1 had protested to such act of the accused persons and as such, one Deben Mahato had attempted to assault him using a *farsa*. Thereafter the petitioner had attempted to assault him by a *farsa* and he tried to prevent himself from the said blow by raising his right hand and as such, the thumb of his right hand was cut and the same was hanging by the skin. That although both these witnesses have claimed themselves to be the eye witnesses of the entire episode. It was also alleged by the aforesaid witnesses that the other accused persons had pelted stones on them.

- ii. PW-3, the victim deposed that the accused persons along with the present petitioner were cutting trees in their *Khamar bari*. He protested to such act of the accused persons and as such the accused persons had encircled him. Thereafter the petitioner had assaulted him on his right hand by a *farsa* and as such, his thumb was cut. Thereafter, Deben Mahato assaulted him on his left hand using a *farsa* and he resisted the said assault and thereafter he sustained injury on his left hand.
- iii. There remains no doubt about the fact that there was a land dispute in between the parties and the same persisted for quite some time. Be

it mentioned that the said land where the alleged incident had occurred was surveyed by an Amin. The evidence of PWs- 1, 2 and 3 revealed a combat between the parties in respect of the aforesaid land dispute and consequently the instant case and a counter case were initiated based on the alleged incident.

iv. The evidence of PW-6 namely Jiban Chakraborty, the Investigating Officer of the instant case, revealed the dispute had originated from construction of a wall.

v. The evidence of DW-3 namely Dr. Ajoy Kumar Pakrashi, it would be evident that one of the accused persons namely Jyoti Mahato, who was acquitted by the Learned Appellate Court, had sustained a sharp cutting injury which was 3" in length and 1/1" thick gap x Bone deep over right parietal region of the scalp. There was another sharp injury of 2" in length x muscle deep over lateral aspect of left fore arm and a sharp cut injury over proximal inter phalangeal joints of right middle ring and little fingers and the said injury was skin deep. From the aforesaid evidence, it would transpire that even one of the co-accused persons in the instant case namely Jyoti Mahato was severely assaulted resulting in such grave injuries. However, such fact was deliberately suppressed by PWs 1, 2 and 3 before the Learned Trial Court.

8. The Learned Advocate representing the State submitted that the prosecution was able to prove its case based on corroborative evidence of the prosecution

witnesses supported by the medical evidence and the revisional application should be dismissed.

9. The dispute between the parties consequent to felling of trees within the land in question claims to be owned by the respective parties had resulted in grievous injury, sustained by PW-3, whereby his right hand thumb had to be amputated. The Learned Magistrate vide Order dated 24.06.1996 had convicted all the accused persons, as per the charge-sheet, dated 03.04.1992, however, in an appeal, the Sessions Judge had acquitted the other 8 offenders, except the present petitioner, which prompted the same to file the instant criminal revisional application.
10. Admittedly, there had been A scuffle between the parties, which led to registration of case and counter case against each other. PW-3, in his evidence stated on reaching the Khamar Bari from his house, he had been surrounded by the miscreants on his objection against felling of trees. He categorically stated the present petitioner to have assaulted him on his right thumb by "*Farsa*", which dislodged the right thumb, in a hanging position.
11. He further stated, Deben Mahato to have assaulted him on his left hand by "*Farsa*", he resisted the same by his hand and sustained injury. The injuries suffered by PW-3 corroborated by the evidence of PW-4. PW-4 deposed to have found PW-3 in consciousness who narrated the history of assault by the aforesaid offending weapon at about 10:20 A.M, on 08.08.1990 by Baneshwar Mahato, Deben Mahato, Shibu Mahato, and Judhisthir Sardar.

12. PW-3 was in his senses, when he narrated the incident of assault, to PW-4 but did not specifically mention to have been inflicted with the severe injury leading to amputation of his right thumb by the petitioner, Baneshwar Mahato exclusively.
13. PW-6, the Investigating Officer submitted, to have investigated both the case and the counter case, pertaining to a dispute originating from the construction of a wall with trees on either sides of the same. PW-6 during his cross-examination on 04.01.1994 stated that he did not examine Bishnupada, the victim and that Bisnhu Padu, PW-3, did not state that the accused persons were felling trees from southern side of the land.
14. PW-4, the doctor who treated PW-3, the victim, had opined, the offending weapon with sharpness, could also be caused if the victim wanted to counter the blow. Both the Learned Magistrate, as well as the Sessions Judge believed the version of PW-3, sustaining the grievous injury, however, failed to collate the un-corroborative extent of the evidence, cited by PW-3, PW-4, and PW-6.
15. PW-3, being the victim did not expressly named, the present petitioner, to be the perpetrator, in the presence of the Medical Officer. PW-3 was not examined by PW-6, the Investigating Officer prior to the submission of the charge-sheet.
16. The proclaimed eyewitness deposed, the petitioner attempted to assault the PW-3, by *farsa*, who tried to save himself through his right hand, resulting in the injury suffered by him on the right thumb.

17. PW-1, PW-2, PW-3 and PW-4 for the first time, expressed before the Court, the direct act of the present petitioner to cause the injury which was not quoted earlier to the Investigating Officer. The evidence of PW-3, being the victim, is dichotomous wherein he had named the petitioner and Deben Mahato, both to have caused physical assault on his body. If Deben Mahato, had really inflicted injury on PW-3 it should have been bodily manifested in severity, being hit by a *farsa*, a sharp weapon.
18. It can be inferred, that the victim, amidst commotion, and outrageous assemblage must have failed to detect the person who had actually tried to inflict the blow. Since, the injury suffered by the victim cannot be obliterated.
19. Under such circumstances, the prosecution having failed to prove the case beyond reasonable doubt, the petitioner, hearing, is entitled to a benefit of doubt.
20. In view of the above discussions, the instant criminal revisional application being CRR 1521 of 2000 is allowed.
21. Accordingly, CRR 1521 of 2000 is disposed of. Connected application, if any, also stands disposed of.
22. Case Diary, if any, to be returned forthwith.
23. There is no order as to costs.
24. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.

25. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)