

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.560 of 1993

{ Against the Judgment of conviction and Order of sentence dated 26.11.1993
passed in Sessions Trial No.143 of 1986 by the court of the Additional
Sessions Judge-III, Madhepura}.

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1. Bhato Paswan @ Narain Paswan, son of Ramphal Paswan.
 2. Bhato Paswan, son of Sudin Paswan.
 3. Nathan Paswan, son of Uttim Paswan.
 4. Sattan Paswan, son of Uttim Paswan.
 5. Sudin Paswan, son of Pasandi Paswan.
 6. Gulat Paswan, son of Uchit Paswan.
 7. Tulo Paswan, son of Uchit Paswan.
 8. Jagdish Paswan, son of Ram Kishun Paswan.
 9. Mahendra Paswan, son of Sipahi Paswan.
 10. Tarani Paswan, son of Sipahi Paswan.
 11. Chhathu Paswan, son of Sri Paswan.
 12. Bishundeo Paswan, son of Sri Paswan.
 13. Dinesh Paswan, son of Fulo Paswan.
 14. Upendra Paswan, son of Uttim Paswan.
 15. Rajendra Paswan, son of Sipahi Paswan.
 16. Deep Narain Paswan, son of Uttim Paswan.

All resident of village-Raghunathpur Pakaria, P.S. Kishunganj, District-
Madhepura.

... .. Appellants.

Versus

The State of Bihar

... .. Respondent.

Appearance :

For the Appellants	:	Ms. Surya Nilambari, Amicus Curiae.
For the State	:	Mr. Shivesh Chandra Mishra, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

**HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA**

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA)

Date : 8-02-2019

This criminal appeal is directed against the Judgment
of conviction and Order of sentence dated 26.11.1993 passed in



Sessions Trial No.143 of 1986, whereunder the Additional Sessions Judge-III, Madhepura, convicted the appellant Bhato Paswan, son of Sudin Paswan, under Section 302 of the Indian Penal Code and the remaining appellants along with Yogendra Paswan under Sections 302/34 read with Section 149 of the Indian Penal Code and, accordingly, all the appellants and Yogendra Paswan have been sentenced to undergo rigorous imprisonment for life. Further, the appellant Bhato Paswan, son of Sudin Paswan, and Yogendra Paswan have been convicted under Section 148 of the Indian Penal Code and the remaining appellants have been convicted under Section 147 of the Indian Penal Code and they have been sentenced to undergo rigorous imprisonment for one year. Further, the accused Yogendra Paswan has been convicted under Section 324 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one year, whereas the appellants Gulat Paswan and Tulo Paswan have been convicted under Section 323 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for six months, further the appellant Bhato Paswan alias Narain Paswan has been convicted under Section 447 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one month. However, all the sentences are ordered to run concurrently.



2. In brief, the prosecution case is that the informant Ramdeo Prasad Mandal (P.W.7) gave his fardbeyan (Ext.4) on 16.03.1984 at about 04.30 P.M. before the A.S.I. Bhola Prasad Singh of Police Station-Kishunganj at Kishunganj Hospital, to the effect that on 16.03.1984 at about 01.00 P.M., he along with his uncle Bishundeo Rai had gone to see his field, situated in the south of his house. When he reached at the field, then saw that the appellant Upendra Paswan was ploughing on his own field and the appellant Bhato Paswan alias Narain Paswan was breaking the soil's lump. He also visualized that the ridge, situated in between his field and the field of the appellant Upendra Paswan was ploughed covering some portions of his field, then he raised objection whereupon the appellant Uperndra Paswan asserted that he would do it, on which he made protest. Thereafter, the appellant Upendra Paswan stopped ploughing the field and moved towards his house and all the appellants came at the field along with Yogendra Paswan, Phulo Paswan (dead) and Uttim Paswan (dead) having Lathi, Garasa, Bhala, bow and arrow. The appellants Sudin Paswan, Tulo Paswan and Uttim Paswan (dead) pointing him uttered that it was he, who prohibited to Upendra Paswan from ploughing the field and ordered their associates to kill him.



Thereafter, Yogendra Paswan gave Garasa blow on his head, causing injury on the right side of his head, then he fell down on the ground having become unconscious. Thereafter, the appellants Gulat Paswan, Tulo Paswan and Phulo Paswan (dead) assaulted him through lathi, causing injury at his arm and back. Having seen him being beaten, his uncle Bishundeo Rai came and made protest whereupon the appellant Sudin Paswan ordered to kill him, then the appellant Bhuto Paswan, son of Sudin Paswan, gave Garasa blow on the head of his uncle Bishundeo Rai at three to four places, due to which he fell down and, thereafter, the other appellants caused injury to Bishundeo Rai, the uncle of the informant, through lathi, due to which he became unconscious. On alarm, the villagers, Rajendra Mandal (not examined), Asharfi Mandal (not examined), Chandradeo Ram (P.W.1), Jago Mandal (P.W.4), Bishwanath Mandal (P.W.6), Mahavir Mandal (not examined) and others proceeded towards the place of the occurrence, then all accused fled away. At that time, the accused Phulo Paswan (dead) took wrist watch worth Rs.475/- from his hand.

3. On the basis of the aforesaid fardbeyan (Ext.4) of the informant Ramdeo Prasad Mandal (P.W.7), Kishunganj P.S. Case No.56 of 1984 was instituted against 18 persons including



the appellants under Sections 147, 148, 323, 324, 307 and 379 of the Indian Penal Code. Later on, Bishundeo Prasad Rai, the uncle of the informant, died and, accordingly, Section 302 of the Indian Penal Code was also added.

4. After investigation, the police submitted the chargesheet on 06.07.1984 against the 19 accused, named in the F.I.R., including the appellants for the offence under Sections 147, 148, 149, 323, 324, 307, 379, 302 and 407 of the Indian Penal Code. Thereafter, the cognizance of the offence was taken and the case was committed to the court of sessions, numbered as Sessions Trial No.143 of 1986 for trial. It is pertinent to mention here that before framing of the charge, the proceeding was dropped against accused Uttim Paswan on 15.12.1987 due to his death and proceeding against accused Phulo Paswan was also dropped due to his death on 18.01.1988 after framing of the charge.

5. During trial, prosecution examined, altogether, 9 witnesses and also got exhibited several documents in support of its case.

6. On the other hand, while the defence has not examined any witness in support of their defence but got exhibited the fardbeyan of Uttim Paswan (dead) of Kishunganj



P.S. Case No.55 dated 16.03.1984 as Ext.A, Charge-sheet No.26 dated 07.06.1984 of Kishunganj P.S. Case No.55 dated 16.03.1984 as Ext.B and injury reports dated 16.03.1984 of Uttim Paswan (dead), appellant no.2 Bhato Paswan, son of Sudin Paswan, and Yogendra Paswan as Exts.C, C/1 and C/2 respectively. From the trends of cross-examination of the prosecution witnesses and the documents filed on behalf of the defence, the defence case is that due to cutting of the ridge by prosecution party, when protest was made, then prosecution party started “Maar-Peet”.

7. The trial court on scrutinizing the materials and the evidence, available on the record, convicted the appellants and one Yogendra Paswan, in the manner, as indicated above, through the impugned Judgment of conviction and Order of sentence.

8. Ms. Surya Nilambari, learned Amicus Curiae, appearing for the appellants challenged the impugned Judgment of conviction and Order of sentence, arguing that the learned trial court failed to appreciate the evidence, available on the record, in its right perspective, as a result whereof, the learned trial court came to wrong conclusion. She further submits that P.W.4 Jago Mandal, P.W.6 Bishwanath Mandal and



P.W.7 Ramdeo Prasad Mandal have stated in their evidence that on protest made by P.W.7 to plough the field, amalgamating the ridge by Uttim Paswan (dead), Uttim Paswan (dead) went to his house and, thereafter, all the appellants along with other accused, named in the F.I.R., variously armed with weapon came at the field of Rajdeep Mandal. Thereupon, on the order of the appellants Sudin Paswan, Tulo Paswan and Uttim Paswan (dead), Yogendra Paswan gave Garasa blow causing head injury to Ramdeo Prasad Mandal (P.W.7). Tulo, Phulo and Gulo also caused injury to him through Lathi. When the deceased Bishundeo Rai rushed there in rescue, then on the order of the appellant Sudin Paswan, Bhato Paswan, son of Sudin Paswan, gave Garasa blow repeatedly at the head of Bishundeo Rai, then Bishundeo Rai fled away towards west and fell down in the ditch of Bengali Mandal, where all the appellants caused assault to him through lathi. But Chandradeo Rai, the brother of the deceased Bishundeo Rai, has stated in his evidence that on knowing about the occurrence, when he reached at the place of the occurrence, he found Ramdeo Prasad Mandal (P.W.7) and Bishndeo Rai (deceased), lying in the field of Rajdeo Mandal sustaining blood oozing injuries on their heads, P.W.7 Ramdeo Prasad Mandal, the informant of this



case, has not stated in his fardebeyan and restatement that the deceased Bishundeo Rai on receiving the head injury at the hand of appellant no.2 fled away but he fell down in the ditch of Bengali Mandal, then all the appellants reached there and assaulted him through Lathi. The Investigating Officer has not been examined in this case, as such, second place of the occurrence has not been established by the prosecution. She further submits that if the evidence of P.W.4 Jago Mandal, P.W.6 Bishwanath Mandal and P.W.7 Ramdeo Prasad Mandal is taken to be true, then also, it would appear that the appellants and other accused, named in the F.I.R., had reached at the field of Rajdeep Mandal, situated adjacent to the field of Uttim Paswan (deceased), where Yogendra Paswan gave Farsa blow, causing blood oozing injury on the head of P.W.7 Ramdeo Prasad Mandal, whereas Gulat Paswan, Tulo Paswan and Phulo Paswan (dead) caused injury to him through Lathi. P.W.8 Dr. Bhagirath Jha found all the injuries on the person of the informant Ramdeo Prasad Mandal (P.W.7), simple in nature. As such, inference could only be drawn that the common object of the appellants and other accused was only to cause hurt to the informant Ramdeo Prasad Mandal (P.W.7), who made protest in ploughing the field and not to commit the murder merely on



intervention by the deceased Bishundeo Rai, giving him to farsa repeated blow on his head by appellant no.2 Bhato Paswan. She further submits that from Ext.A, it would appear that regarding the same time and the place of the occurrence, Kishunganj P.S. Case No.55 of 1984 was lodged on the basis of the written report of Uttim Paswan (dead) in which allegation was made for causing injuries to Uttim Paswan, Bhato Paswan, son of Sudin Paswan, and Yogendra Paswan at the hands of the prosecution party, due to making protest by Uttim Paswan in cutting the ridge by Rajdeep Mandal, the brother of the informant. The Investigating Officer, after investigation, submitted the charge-sheet in that case but the prosecution witnesses denied the same and also denied the injuries as sustained by Uttim Paswan (dead), Bhato Paswan, son of Sudin Paswan, and Yogendra Paswan, but P.W.7 Ramdeo Prasad Mandal admitted at paragraph-17 in his cross-examination that regarding the same date of the occurrence, the accused had filed a case, which is pending in the court of Sri Mandal Kisku, in which he is on bail. As such, it was the prosecution party, who was aggressor at the time of committing "Maar-Peet" but the real fact has been concealed by the prosecution. She further argued that though P.W.4, P.W.5 and P.W.7 have stated in their



evidence that when the deceased Bishundeo Rai rushed to save P.W.7 Ramdeo Prasad Mandal, then appellant no.2 Bhato Paswan gave Farsa blow at his head thrice but it would appear from Ext.C/1 that appellant no.2 had also received the injuries at that time, hence, for causing head injury thrice at the head of Bishundeo Rai, appellant no.2 could be held responsible for culpable homicide not amounting to murder under Section 302 Part-I of the Indian Penal Code, exceeding the right of private defence, not under Section 302 of the Indian Penal Code.

On the other hand, learned Additional Public Prosecutor for the State argued that P.W.4 Jago Mandal, P.W.6 Bishwanath Mandal and P.W.7 Ramdeo Prasad Mandal, who is the informant of the case and also injured, have fully supported the prosecution case and, accordingly, the learned trial court right convicted and sentenced the appellants through the impugned Judgment of conviction and Order of sentence. He further argued that the nature of injuries of Uttim Paswan and Yogendra Paswan and the appellant no.2 Bhato Paswan, as detailed in Ext.C, C/2 and C/1 is simple and superficial in nature, as such, the prosecution is not required to give the explanation of the injuries of accused Uttim Paswan, Yogendra Paswan and the appellant no.2 Bhato Paswan.



9. I have gone through the materials and evidences, available on the record, to appreciate the argument as advanced by Ms. Surya Nilambari, Amicus Curiae, appearing for the appellants and also by Mr. Shivesh Chandra Mishra, learned A.P.P. appearing for the State.

10. Out of the nine witnesses, examined on behalf of the prosecution, P.W.2 Upendra Mandal and P.W.3 Bharoshi Mandal, are the witnesses of the seizure list of the blood stained soil and the grass, seized from the place of the occurrence. P.W.9 Sikandar Yadav is a formal witness, who has proved the signature of one Indradeo Yadav on the inquest report of the dead body of the deceased Bishundeo Rai. P.W.1 Chandradeo Rai, the brother of the deceased Bishundeo Rai, is not an eye witness to the occurrence rather he reached at the place of the occurrence, just after the occurrence and came to know about the occurrence from Bishwanath Mandal (P.W.6). P.W.4 Jago Mandal and P.W.6 Bishwanath Mandal are the eye witnesses, whereas P.W.7 Ramdeo Prasad Mandal is injured and the informant of the case. P.W.5 Dr. B.N. Mishra held the post-mortem examination over the dead body of the deceased Bishundeo Rai. P.W.8 is Dr. Bhagirath Jha, who examined the injuries of the deceased Bishundeo Rai and also the injuries of



Ramdeo Prasad Mandal (P.W.7)

11. P.W.1 Chandradeo Rai has deposed in his evidence that on 16.03.1984 at about 01.00 P.M., he was at his house and came to know about the occurrence. Thereafter, he went to the place of the occurrence and saw that Bishundeo Rai and Ramdeo Mandal (P.W.7) were lying in the field of Rajdeo Prasad Mandal in injured condition and blood was oozing out from their heads. Rajdeo Prasad Mandal is the brother of Ramdeo Prasad Mandal (P.W.7), whereas Bishundeo Rai was their uncle. When he reached at the place of the occurrence, he saw Bishwanath Mandal (P.W.6), Jago Mandal (P.W.4) and Asharfi Mandal there. Bishwanath Mandal (P.W.6) narrated the incident to him in detail. This witness has further stated in his cross-examination that he had stated before the police that he was not at the house at the time of the occurrence. In paragraph-12 of his cross-examination, this witness further stated that his brother died at Saharsa Hospital on the date of the occurrence.

From the evidence of this witness, it is apparent that he had not seen the occurrence rather he reached at the place of the occurrence, just after the occurrence and saw his deceased brother Bishundeo Rai and the informant Ramdeo



Prasad Mandal (P.W.7) in injured condition sustaining blood oozing injury at their hands in the filed of Rajdeo Prasad Mandal.

12. P.W.4 Jago Mandal has stated in his evidence that the occurrence is of before four years of Friday of at about 01.00 P.M.. At that time, he was present at his house. In the field of Ramdeo Mandal, the quarrel in between Ramdeo Mandal and the appellant Upendra Paswan was going on, then he went there and saw that the appellant Upendra Paswan had ploughed the ridge of the field of Ramdeo Mandal, covering in his field. The appellant Upendra Paswan after abusing Ramdeo Mandal went to his house and, thereafter, the appellants along with Uttim Paswan (dead), Yogendra Paswan and Phulo Paswan (dead) having Lathi, Bhala, Garasa, arrow and bow in their hands came at the field of Ramdeo Mandal. On the order of the appellants Sudin Paswan, Tulo Paswan and Uttim Paswan (dead), Yogendra Paswan gave Garasa blow causing head injury to Ramdeo Mandal. Tulo, Phulo and Gulo also caused injury to Ramdeo Mandal through Lathi. When Bishundeo Rai rushed there in rescue, then on the order of Sudin Paswan, Bhato Paswan, son of Sudin Paswan, gave Garasa blow repeatedly at the head of Bishundeo Rai, then Bishundeo Rai fled away



towards west and fell down in the ditch of Bengali Mandal. Thereafter, all the accused reached there and assaulted him through Lathi. At that time, Phulo Paswan (dead), snatched the wrist watch of Ramdeo Mandal. He has stated in his cross-examination at paragraph-12 that at one Rassi in the south to the place of the occurrence, the house of the accused is situated, he further repeated that the house of the accused is situated in the south of the field of the place of the occurrence. This witness has further stated in paragraph-13 of his cross-examination that adjacent to the field of Ramdeo Mandal, the field of Uttim Paswan is situated but he does not know whether the Khasra of both the lands are same or not.

From the evidence of this witness, it is clear that the informant Ramdeo Mandal (P.W.7) sustained head injury caused by Yogendra Paswan through Garasa and, thereafter, Tulo, Phulo and Gulo also caused injury to him through lathi. When the deceased Bishundeo Rai rushed to save the informant Ramdeo Mandal (P.W.7), then Bhato Paswan, son of Sudin Paswan, gave Garasa blow repeatedly at his head, then he fled away in west direction but he fell down in the ditch of Bengali Mandal, where other accused caused injury to him through lathi.

13. P.W.6 Bishwanath Mandal has stated in his



evidence that the occurrence is of before 3/4 years of about 01.00 P.M. of Friday. At that time, he was sitting at his Sahan, situated at 4-5 Laghies from the place of the occurrence and saw that Ramdeo Mandal (P.W.7) and Upendra Paswan were abusing to each other in the field of Ramdeo Mandal because Upendra Paswan had cut the ridge of the field of Ramdeo Mandal and covered the same in his field. Thereafter, Upendra Paswan went to his house but he immediately alongwith Uttim Paswan (dead) and Phulo Paswan (dead) and the appellants having Garasa, Bhala, lathi, arrow and bow came near Ramdeo Mandal. On the order of Phulo Paswan, Sudin Paswan and Uttim Paswan, Yogendra Paswan gave Garasa blow causing blood oozing injury on the head of Ramdeo Mandal. Phulo Paswan, Tulo Paswan and Gulo Paswan also caused injury to Ramdeo Mandal through Lathi, due to which he fell down. When Bishundeo Rai, the uncle of Ramdeo Mandal, rushed in rescue of Ramdeo Mandal, then on the order of Sudin Paswan, Bhato Paswan, son of Sudin Paswan, gave Garasa blow repeatedly at the head of Bishundeo Rai. Thereafter, Bishundeo Rai fled away but he fell down in the ditch of Bengali Mandal, then all the accused started to cause assault to Bishundeo Rai through Lathi. This witness has further stated in paragraph-16 in his cross-



examination that at the time of the occurrence, none of the accused had sustained injury and the accused has not lodged any case against him or Ramdeo Mandal.

14. P.W.7 Ramdeo Prasad Mandal, who is the informant, has stated in his evidence that on 16.03.1984 at about 01.00 P.M., he had gone to see the field situated at Raghunathpur Paharia, then saw that Upendra Paswan was ploughing the field, covering the ridge of his field, and Bhato Paswan alias Narain Paswan was breaking the soil's lump. He forbade Upendra Paswan in ploughing the field, then he asserted that he would plough the land. Thereafter, he made protest, saying that the said land is belonging to his plot. Thereafter, Upendra Paswan left to plough the field and went to his house. After sometime, appellants Upendra Paswan, Deep Narain Paswan, Nathan Paswan, Sattan Paswan, Jagdish Paswan, Chhathu Paswan, Bishundeo Paswan, Mahendra Paswan, Tarani Paswan, Rajendra Paswan, Tulo Paswan, Dinesh Paswan, Sudin Paswan, Bhato Paswan, son of Sudin Paswan, with Uttim Paswan, Phulo Paswan and Yogendra Paswan having Lathi, Garasad, Bhala, arrow and bow in their hands came to his field. On the order of Uttim, Sudin and Tulo, Yogendra gave Garasa blow causing blood oozing injury on the left side of his forehead



and he fell down. Thereafter, Gulat, Phulo and Tulo caused injury to him through Lathi. When his uncle Bishundeo Rai rushed to save him, then on the order of Sudin Paswan, his son Bhato Paswan caused Farsa injury on his head. Bishundeo Rai after sustaining blood oozing injury on his head fell down and again started to flee away in west direction but he fell down in the ditch of Bengali Mandal. Thereafter, all the accused rushed there and started to cause injury to him through Lathi. The occurrence was witnessed by Bishwanath Mandal (P.W.6), Jago Mandal (P.W.4), Asharfi Mandal (not examined), Bharoshi Mandal (P.W.3), Upendra Mandal (P.W.2) and others. At the time of fleeing away from the place of the occurrence, Phulo Paswan snatched his wrist watch worth Rs.475/-. He further stated that he along with his uncle Bishundeo Rai were rushed to Kishunganj Hospital where in the evening at about 04.30 P.M., Darogaji recorded his fardbeyan. Seeing the serious condition of Bishundeo Rai, he was referred to Saharsa Hospital, where he died. He further stated that Bhola Prasad Singh, Sub Inspector of Police Station Kishunganj had recorded his fardbeyan, who read over the same, then he put his signature. Raghunath Paswan and Bhup Narain Pathak also put their signature as witnesses and he proved his fardbeyan as



Ext.4. He has stated in paragraph-10 in his cross-examination that 100 yards away, in south to his field, which is the place of the occurrence, Paswan Toli is situated. In between his land and Paswan Toli, there was land of Chandra Kant Jha, which was purchased by Uttim Paswan but this witness showed his ignorance that the plot number of his land and the purchased land of Uttim Paswan is the same but he admitted that the land was purchased from Chandra Bhushan Jha in the name of his brother Rajdeep Mandal, Chandra Bhushan Jha and Chandra Kant Jha are full brothers. He has further stated that he has not purchased any portion of the land of the place of the occurrence from his brother Rajdeep Mandal. He has further stated that he is separate to his two brothers and his brother Rajdeep Mandal has purchased the P.O. land in his name. His brother Rajdeep Mandal has not been examined in this case. He has further stated in paragraph-16 of his cross-examination that his father is not witness in this case as he was not present at the time of the occurrence at place of the occurrence. He has further stated in paragraph-17 of his cross-examination that he has no knowledge that the accused had also lodged the case regarding the occurrence of the same day against him and others and he had no knowledge whether the accused had sustained injury on the



date of the occurrence but he further admitted that regarding the occurrence of the same day, a case was lodged, which is pending in the court of Sri Mandal Kisku in which he is on bail. In paragraph-23 of his cross-examination, this witness has stated that he had not stated in his fardbeyan or restatement that on seeing the injury received by him, his uncle rushed there. He had also not stated that his uncle fled away and fell down in the ditch of Bengali Mandal, then accused reached there and caused injury to him. This witness further stated in paragraph-26 of his cross-examination that it is not true that no occurrence took place in the manner as detailed by him, rather he and his associates put the fire in the house of Uttim Paswan and caused injury to Uttim Paswan, Bhato Paswan and Yogendra Paswan and this case has been lodged only to save the skin to that case.

15. P.W.8 Dr. Bhagirath Jha has stated in his evidence that on 16.03.1984, he was posted as Senior Medical Officer, Kishunganj. On that day at about 02.45 P.M, he examined Bishundeo Rai (deceased), son of Late Banwari, resident of Raghunathpur Pakaria, P.S. Kishunganj and found the following injuries on his person.

(i). One cut incised wound 3" x bone deep x 1/4" on the anterior part of the right parietal region of the head. The wound was bleeding.



The injury was grievous in nature and caused by some sharp cutting weapon such as Pharsa.

(ii). One cut incised wound 2½” x bone deep x 1/4” on the anterior part of the left parietal region of the head.

It was grievous in nature and caused by some sharp cutting weapon.

(iii). One cut incised wound 2” x bone deep x 1/4” on the occipital region of the head. It was grievous and caused by some sharp cutting weapon.

(iv). Swelling of the back of the neck.

It was simple in nature and caused by some hard and blunt substance.

(v). One bruise with swelling of 3” ecchymosis on the right shoulder joint. The injury was simple in nature and caused by hard and blunt substance.

The age of the injuries was within five hours.

This witness has proved the injury report of the deceased Bishundeo Rai as Ext.5.

P.W.8 Dr. Bhagirath Jha has further deposed that on the same day, he examined Ramdeo Mandal (P.W.7) and found the following injuries on his person:

(i). One cut incised wound 2” x bond deep x 1/4” on the upper and middle part of the left parietal region of the head. The injury was simple in nature and caused by some sharp cutting weapon.

(ii). Swelling of the left middle finger. It was simple in nature and caused by some hard and blunt substance.



(iii). Swelling of the right wrist joint. It was simple in nature and caused by hard and blunt substance.

(iv). Swelling of right and the left shoulder joint. It was simple in nature and caused by hard and blunt substance.

The age of the injuries was within five hours.

This witness has proved the injury report of Ramdeo Mandal (P.W.7) as Ext.5/1.

This witness has further stated in paragraph-5 of his cross-examination that in Injury nos.(i) to (iii) of Bishundeo Rai, he has not mentioned the colour of the injury. According to him, X-ray examination was not necessary with respect to the injuries of Bishundeo Rai. He has further stated that the injury nos.(iv) and (v) of Bishundeo Rai could not be manufactured but it could be possible by fall on some hard substance. He has further stated that he has not given the size of the injury no.(iv) of Bishundeo Rai. The injured Bishundeo Rai was treated in the hospital and then referred to Saharsa Hospital. He has further stated in his cross- examination that he has not mentioned the colour of the injuries as found on the person of Ramdeo Mandal (P.W.7) and the size of injunry nos.(ii) to (iv) of Ramdeo Mandal has not been given.

From the evidence of this witness, it is apparent that three cut incised injuries, grievous in nature, were found on



the head of the deceased Bishundeo Rai and two injuries, i.e., swelling and one bruise with swelling and ecchymosis were found on the back of the neck and at right shoulder joint, simple in nature and both injuries could be received by fall on some hard blunt substance. Four injuries, as found on the person of Ramdeo Mandal (P.W.7) are simple in nature, out of which injury no.(i) was caused by some sharp cutting weapon and other by hard and blunt substance.

16. P.W.5 Dr. B.N. Mishra has stated in his evidence that on 17.03.1984 at 11.50 P.M. he held the post-mortem examination on the dead body of the deceased Bishundeo Rai, son of Late Banwari Rai, of village-Raghunathpur Pakaria, P.S. Kishunganj, District-Madhepura, in presence of Shri C.B. Rahotagi, Executive Magistrate, Madhepura and found the following antemortem injuries on his person:

(1). Three stitched wounds on the scalp (a) 3” long right side and back side of the scalp (b) 2½” long left anterior quadrant of the scalp (c) 2” long right anterior quadrant of the scalp.

On removing the skin, subcutaneous haematoma was found over the whole of the vault of the skull with linear fracture 3” long in the sagittal plane in the mid portion of left parietal bone.



On removing the vault of the skull extra-dural blood which was ante-mortem about 6 ounces in quantity was found-

-On removing the maninges, both sides, the cerebral hemisphere were covered with blood clots and blood vessels.

(2). Bruise with swelling 10" x 1" vertically oblique over the left scapula.

(3). Bruise with swelling were found over right scapula, three in number each 5" x 1".

(4). Multiple linear abrasions over the right flank and lumber region on the right side of the back of the body.

(5). Three abrasions each 1" x 1/8" over right side of the abdomen.

(6). Abrasion 6" x 1/8" over tip of the right shoulder.

(7). Multiple linear abrasions over the right flank of the abdomen and lower portion of the chest-left side in the axillary line (mid portion).

(8). Multiple abrasions over the front of the left arm.

According to this witness, some difference were found with police inquest viz., the head injuries were stitched and covered with bandages. This was demonstrated to the Magistrate Shri Rahotagi and corroborated by the two brothers of the deceased and the constable, who had identified the body. According to him, the death of Bishundeo Rai was caused due to concussion and compression of the brain and shock from the



head injuries. Injuries were sufficient to cause the death in ordinary course of nature. This witness has proved the post-mortem report of the deceased Bishundeo Rai as Ext.3. In cross examination, this witness has stated that concussion and compression does not cause immediate death. It may take hours to cause death.

17. From the evidence of P.W.4 Jago Mandal, P.W.6 Bishwanath Mandal and P.W.7 Ramdeo Prasad Mandal (informant), it would appear that when the informant Ramdeo Prasad Mandal (P.W.7) reached in the field, purchased in the name of his brother Rajdeep Prasad Mandal, then saw that the appellant no.14 Upendra Paswan was ploughing the field and the appellant no.1 Bhato Paswan alias Narain Paswan was breaking the soil's lump and he visualized that the ridge situated in between the field of his brother Rajdeep Prasad Mandal and the appellant no.14 Upendra Paswan was ploughed. P.W.7, the informant Ramdeo Prasad Mandal made protest, then the appellant no.14 started abusing and went to his house. Thereafter, the appellant no.14 along with other appellants with Yogendra Paswan, Phulo Paswan (dead) and Uttim Paswan (dead) having Lathi, Bhala, Farsa, arrow and bow came there and on the order of the appellant no.5 Sudin Paswan, appellant



no.7 Tulo Paswan and Uttim Paswan (dead), Yogendra Paswan gave Garasa blow, causing blood oozing injury on the head of the informant Ramdeo Prasad Mandal (P.W.7). The appellant no.6 Gulat Paswan, appellant no.7 Tulo Paswan and Phulo Paswan (dead) also caused injury to him through Lathi. When Bishundeo Rai (deceased), the uncle of Ramdeo Prasad Mandal (P.W.7), rushed there to save, then on the order of the appellant no.5 Sudin Paswan, appellant no.2 Bhato Paswan, son of Sudin Paswan, gave Farsa blow thrice on his head. On receiving the Farsa injury, the deceased Bishundeo Rai fell down but he again ran towards west but he fell down in the ditch of Bengali Mandal, where all the accused including the appellants started to cause assault through Lathi to him. But P.W.1 Chandradeo Rai, the brother of the deceased Bishundeo Rai, has stated in his evidence, as discussed above, that on hearing about the occurrence when he reached at the place of the occurrence, then saw the informant Ramdeo Prasad Mandal (P.W.7) and the deceased Bishundeo Rai lying in the field of Rajdeep Prasad Mandal, the brother of the informant Ramdeo Prasad Mandal P.W.7, and the blood was oozing out from their heads and Bishundeo Rai was unconscious. P.W.1 has not stated about falling of Bishundeo Rai in the ditch of Bengali Mandal and



about the rest injuries on the body of the deceased Bishundeo Rai. The informant Ramdeo Prasad Mandal (P.W.7) has also not stated in his fardbeyan about fleeing of the deceased Bishundeo Rai, after sustaining head injuries and his falling in the ditch of Bengali Mandal, where the appellants and others gave Lathi at him. P.W.7 Ramdeo Prasad Mandal has, very clearly, stated in paragraph-23 of his cross-examination that he had not stated in his re-statement that on seeing him being assaulted by the accused, his uncle Bishundeo Rai (deceased) came running there. He had not stated in his re-statement that after receiving the injury, his uncle Bishundeo Rai (deceased) fled away from there and fell down in the ditch of Bengali Mandal, where all the accused assaulted him. In this case, the Investigating Officer has not been examined, as such, it has not been proved and established by the prosecution that the deceased also sustained lathi injuries in ditch of Bengali Mandal, when he after receiving the head injury fled away and fell down there. It would also appear from the evidence of the informant Ramdeo Prasad Mandal (P.W.7) that in paragraph-17 of his cross-examination, he had showed his ignorance about lodging of the case by the defence regarding the same time of the occurrence and receiving the injuries in the occurrence, while he admitted



that regarding the same day of the occurrence, accused had lodged a case, which is pending in the court of Sri Mandal Kisku, in which he is on bail.

18. Ext.A is the certified copy of the F.I.R. of Kishunganj P.S. Case No.55 dated 16.03.1984, registered under Sections 147, 148, 323, 379, 426 and 324 of the Indian Penal Code against 10 persons including the informant Ramdeo Prasad Mandal (P.W.7), deceased Bishundeo Rai and Deep Narain Mandal, instituted on the basis of fardbeyan of the accused Uttim Paswan (dead), recorded on 16.03.1984 at about 04.30 P.M. at Police Station-Kishunganj. Ext.B is the certified copy of the Charge-sheet No.26 dated 07.06.1984, submitted, after investigation, in Kishunganj P.S. Case No.55 dated 16.03.1984, under Sections 147, 323 and 447 of the Indian Penal Code. It is alleged in the fardbeyan of the accused Uttim Paswan (dead) that on 16.03.1984 at about 12 O'clock, he went to the field, situated in the north of the village, then saw that Rajdeep Prasad Mandal had cut the ridge of his field and amalgamated the same in his field on which he made protest, then Rajdeep Prasad Mandal started to abuse him and called his own men. Thereafter, Ramdeo Prasad Mandal (P.W.7), Kailu Mandal, Umesh Mandal, Srideo Mandal, Kuldeep Mandal,



Murlidhar Mandal and Bishundeo (deceased) having lathi, Bhala and arrow in their hands came there. Rajdeep Mandal and Luxmi Mandal told that the ridge has not been broken in abusive language. Thereafter, Ramdeo Prasad Mandal (P.W.7) gave lathi blow at his head. When Bhato Paswan (appellant no.2) and Yogendra Paswan rushed to save him, then Bishundeo Rai (deceased) caused injury through Lathi and Garasa to them. Yogendra Paswan was also assaulted by Kailu Mandal and Umesh Mandal. At that time, Ramdeo Prasad Mandal put the fire in his house.

Exts.C, C/1 and C/2 are the injury reports of the accused Uttim Paswan, Bhato Paswan, son of Sudin Paswan, and Yogendra Paswan, prepared by the doctor of Uda-kishunganj Hospital on the basis of the requisition issued by A.S.I. Bhola Paswan of Kishunganj Police Station. Ext.C shows that one lacerated wound 1/2" x skin deep x 1/6" on the upper part of the head, simple in nature, caused by hard and blunt substance, scratch mark 1/2" on the post upper part of the left parietal region of the head, simple in nature, caused by hard and blunt substance, swelling of the left arm, simple in nature, caused by hard and blunt substance, were found on the person of Uttim Paswan (dead). Ext.C/1 shows that three injuries were



found on the person of Bhato Paswan, son of Sudin Paswan, viz. one lacerated wound 1/2" x skin deep x 1/6" dorsal aspect of the right palm, simple in nature, swelling of the anterior part of the inter parietal region of the head, simple in nature, caused by hard and blunt substance, swelling with 3" ecchymosis on the right shoulder joint, simple in nature, caused by hard and blunt substance and swelling of the right elbow joint, simple in nature, caused by hard and blunt substance. Ext.A, the certified copy of the F.I.R. of Kishunganj P.S. Case No.55 dated 16.03.1984 and Ext.B, the certified copy of the Charge-sheet No.26 dated 07.06.1984, submitted in Kishunganj P.S. Case No.55 dated 16.03.194, suggest that, at least, the occurrence of 'Maar-Peet' took place near the field of Rajdeep Prasad Mandal, the brother of the informant Ramdeo Prasad Mandal (P.W.7) and the accused Uttim Paswan (dead)

19. The evidence of P.W.4 Jago Mandal, P.W.6 Bishwanath Mandal and P.W.7 Ramdeo Prasad Mandal clearly indicates that when P.W.7 reached at the field of his brother Rajdeep Prasad Mandal, then he visualized that the ridge of his field was being ploughed by the Upendra Paswan and Bhato Paswan alias Narain Paswan was breaking the soil's lump. When Ramdeo Prasad Mandal (P.W.7) made protest, then



Upendra Paswan asserted that he would do it and, thereafter, altercation started between P.W.7 Ramdeo Prasad Mandal and Upendra Paswan. Upendra Paswan moved from there to his house and again came at the field along with Phulo Paswan (dead), Uttim Paswan (dead) and Yogendra Paswan and the appellants. Thereafter, on the order of Uttim Paswan (dead) and the appellant no.7 Tulo Paswan, Yogendra Paswan gave Garasa blow on the head of Ramdeo Prasad Mandal (P.W.7), causing blood oozing injury on his head and he fell down, then the appellant no.6 Gulat Paswan, appellant no.7 Tulo Paswan and Phulo Paswan (dead) caused injury at his forearm and back. On seeing Ramdeo Prasad Mandal (P.W.7) being assaulted and having received injury, his uncle Bishundeo Rai, rushed there in his rescue, then on the order of the appellant no.5 Sudin Paswan, Bhato Paswan (appellant no.2) gave Garasa blow thrice on the head of Bishundeo Rai causng blood oozing injury, then he fell down but he again woke up and fled away towards west direction and fell down in the ditch of Bengali Mandal, where all the accused, named in the F.I.R., including the appellants started to cause assault him through Lathi. According to Dr. Bhagirath Jha, four injuries were found on the person of P.W.7 Ramdeo Prasad Mandal, out of which one was cut incised



wound 2" x bone deep x 1/4" on the upper and middle part of the left parietal region of the head, simple in nature and three swellings on the other parts of his body, simple in nature. At the time of assaulting to P.W.7 Ramdeo Prasad Mandal, there was no intervening circumstance. As such, the nature of injury of P.W.7 clearly indicates that the appellants and other accused had no common object to commit the murder rather the common object was to cause hurt to Ramdeo Prasad Mandal (P.W.7). On seeing P.W.7 Ramdeo Prasad Mandal being assaulted and having received injury, the deceased Bishundeo Rai rushed there to save and made intervention, then the appellant no.2 Bhato Paswan gave Garasa blow thrice on his head, therefore, on the basis of receiving the grievous injury by Bishundeo Rai, caused by sharp cutting weapon at the hand of the appellant no.2 Bhato Paswan, no inference can be drawn that all the accused had common object to commit the murder of the deceased Bishundeo Rai. The appellant no.2 Bhato Paswan had also sustained injuries at that time as appears from Ext.C/1, hence, he could be held guilty for culpable homicide not amounting to murder under Section 304 Part-I of the Indian Penal Code, not for murder under Section 302 of the Indian Penal Code, due to causing three incised injuries at the head of the deceased



Bishundeo Rai.

20. On the basis of the aforesaid discussions, all the appellants are held guilty for the offence under Sections 324 read with Section 149 and 323 read with Section 149 of the Indian Penal Code. Further, the appellant no.2 Bhato Paswan, son of Sudin Paswan, is held guilty for the offence under Section 304 Part I of the Indian Penal Code. The conviction of the appellant no.2 Bhato Paswan, son of Sudin Paswan, under Section 302 and 148 of the Indian Penal Code, conviction of other appellants under Section 147 of the Indian Penal Code and the conviction of appellant no.1 Bhato Paswan alias Narain Paswan under Section 447 of the Indian Penal Code are, hereby set aside.

21. The records show that the appellant no.2 Bhato Paswan, son of Sudin Paswan, was in judicial custody for about 5 years and 5 months and the rest appellants were also in judicial custody for about two months after conviction and for more than one month prior to conviction. Therefore, the appellants are sentenced to the period, which they have already undergone.

22. With the aforesaid modification in the Judgment of conviction and order of sentence, this appeal is dismissed.



23. Let the copy of the first page and last page of this Judgment be handed over to Ms. Surya Nilambari, Amicus Curiae, for needful.

(Rajendra Kumar Mishra, J)

Hemant Kumar Srivastava, J:- I agree.

**Pradeep
Srivastava/-**

(Hemant Kumar Srivastava, J)

AFR/NAFR	NAFR
CAV DATE	18.09.2018.
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