

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.158 of 2006

- =====
1. Krishna Jha, Son of late Lakshmi Kant Jha
 2. Krishna Chandra Jha, Son of Sir Kedar Jha
 3. Bhogendra Mishra @ Vyas Mishra, Son of Deo Kant Mishra
 4. Banshidhar Jha, Son of Late Lakshmi Kant Jha,
- All resident of village Phent, Police Station Basopatti, District-
Madhubani.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 274 of 2006

=====

Shiv Nath Jha, Son of Dinesh Jha, Resident of village Phent, Police
Station- Basopatti, District- Madhubani.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 717 of 2006

=====

Shashinath Jha, Son of late Suresh Jha, Resident of Village- Phent,
Police Station- Basopatti, District- Madhubani.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 273 of 2016

Arising Out of PS. Case No.-3 Year-2002 Thana- BASOPATTI District- Madhubani

=====

Meena Devi @ Meena Kumari, Wife of Sri Shivrath Jha, Resident of
Village- Phent, P.S.- Basopatti, District- Madhubani.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 426 of 2016

Arising Out of PS. Case No.-3 Year-2002 Thana- BASOPATTI District- Madhubani

=====

Santosh Kumar Jha @ Shankar Jha, son of Late Dukhmohan Jha,
Resident of village- Phent, P.S. Basopatti, District- Madhubani.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

Acts/Sections/Rules:

Indian penal Code (IPC) - Sections 147, 148, 149, 447, 342, 323, 324, 307, 354, 379, 302 and 504

Appeal - against convictions under sections 323, 342, 302, 149, 147, 148, 302/149, 354 of IPC - Informant lodged FIR in which he alleged that appellants-accused came at his place variously armed with pistol and *lathis*. Informant and his parents were assaulted. Further, mother of informant was abused and gold chain was snatched. Kiosk/shop of informant was also ransacked and looted. Timely intervention of villagers saved life of informant and his parents. In the course of treatment of informant, he succumbed to injuries after more than a week.

Held - perusal of medical evidences reflects that deceased was not brutally assaulted as alleged - initial injuries sustained by deceased and his relatives were simple in nature, which signifies that assault was not with purpose or knowledge to kill - Evidence by witnesses reveal that there was a property dispute between both the accused and deceased, and the occurrence was at spur of moment - Investigator found that two persons from side of accused were also found to be injured and the shop of the deceased was not ransacked - Compounder who declared the deceased dead has not been examined - no cross-FIR by accused even after the injury of two persons on side of accused indicate that perhaps there would have been attempt to settle the dispute, and lack of apprehension that deceased would succumb to injuries - Held - It was absolutely fortuitous that deceased died, hence conviction under Section 302/149 of IPC is unjustified. It was a *bhala* injury on head by appellant that ultimately deteriorated and proved fatal. However, appellant did not have either intention or knowledge that attack by him might, in ordinary course of nature lead to death. Hence, no case under section 304 of IPC is made out. At best, appellant can be punished under section 326 of IPC - Two appellants who had participated in affray are guilty of offence under Section 323 of IPC - Nothing on record shows that other appellants were present at place of occurrence and that they participated in fight, hence their conviction under Section 147 and 148 of IPC set aside.

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All resident of village Phent, Police Station Basopatti, District-
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CRIMINAL APPEAL (DB) No. 274 of 2006

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CRIMINAL APPEAL (DB) No. 273 of 2016

Arising Out of PS. Case No.-3 Year-2002 Thana- BASOPATTI District- Madhubani

Meena Devi @ Meena Kumari, Wife of Sri Shivnath Jha, Resident of Village-
Phent, P.S.- Basopatti, District- Madhubani.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 426 of 2016

Arising Out of PS. Case No.-3 Year-2002 Thana- BASOPATTI District- Madhubani

Santosh Kumar Jha @ Shankar Jha, son of Late Dukhmohan Jha, Resident of
village- Phent, P.S. Basopatti, District- Madhubani.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 158 of 2006)

For the Appellant/s	:	Mr. Bindhyachal Singh, Sr. Advocate Mr. Vipin Kumar Singh, Advocate Ms. Nikita Mittal, Advocate Mr. Janmejy Giridhar, Advocate
For the Respondent/s	:	Ms. Shashi Bala Verma, APP
For the Informant	:	Mr. Anurag Tiwary, Advocate Mr. Pranjal Singh, Advocate

(In CRIMINAL APPEAL (DB) No. 274 of 2006)

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate Ms. Surya Nilambari, Advocate Mr. Bimal Kumar, Advocate Mr. Ritwik Thakur, Advocate Mrs. Vaishnavi Singh, Advocate.
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For the Respondent/s	:	Ms. Shashi Bala Verma, APP
For the Informant	:	Mr. Anurag Tiwary, Advocate Mr. Pranjal Singh, Advocate

(In CRIMINAL APPEAL (DB) No. 717 of 2006)



For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
 Ms. Surya Nilambari, Advocate
 Mr. Bimal Kumar, Advocate
 Mr. Ritwik Thakur, Advocate
 Mrs. Vaishnavi Singh, Advocate.

For the Respondent/s : Ms. Shashi Bala Verma, APP
 For the Informant : Mr. Anurag Tiwary, Advocate
 Mr. Pranjal Singh, Advocate

(In CRIMINAL APPEAL (DB) No. 273 of 2016)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
 Ms. Surya Nilambari, Advocate
 Mr. Bimal Kumar, Advocate
 Mr. Ritwik Thakur, Advocate
 Mrs. Vaishnavi Singh, Advocate.

For the Respondent/s : Ms. Shashi Bala Verma, APP
 For the Informant : Mr. Anurag Tiwary, Advocate
 Mr. Pranjal Singh, Advocate

(In CRIMINAL APPEAL (DB) No. 426 of 2016)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
 Ms. Surya Nilambari, Advocate
 Mr. Bimal Kumar, Advocate
 Mr. Ritwik Thakur, Advocate
 Mrs. Vaishnavi Singh, Advocate.

For the Respondent/s : Ms. Shashi Bala Verma, APP
 For the Informant : Mr. Anurag Tiwary, Advocate
 Mr. Pranjal Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 07-03-2024

All the appeal arising out of same FIR but
 two Trials.

2. We have heard Mr. Bindhyachal Singh,
 the learned senior Advocate for the appellants/ Krishna
 Jha, Krishna Chandra Jha, Bhogendra Mishra @ Vyas
 Mishra and Banshidhar Jha, in Cr. APP. (DB) No. 158 of
 2006 and Mr. Ajay Kumar Thakur, assisted by Ms.



Surya Nilambari, the learned Advocates for the appellants/Shiv Nath Jha, Shashinath Jha, Meena Devi @ Meena Kumari and Santosh Kumar Jha @ Shankar Jha in Cr. APP. (DB) Nos. 274 of 2006, 717 of 2006, 273 of 2016 and 426 of 2016 respectively.

3. The appellants/Krishna Chandra Jha, Bhogendra Mishra, Banshidhar Jha, Shiv Nath Jha and Shashinath Jha have been tried in Sessions Trial No. 319 of 2002, whereas appellants Santosh Kumar Jha @ Shankar Jha and Meena Kumari have been tried in Sessions Trial No. 429 of 2006.

4. In Sessions Trial No. 319 of 2022, seven witnesses have been examined on behalf of the prosecution and three on behalf of the defence; whereas in Sessions Trial No. 429 of 2006, six witnesses on behalf of the prosecution and two on behalf of the defence have been examined.

5. Almost all the witness for the prosecution are common in both the Trials. Two



different witnesses have been examined on behalf of the defence in Sessions Trial No. 429 of 2006.

6. The evidence more or less in both the Sessions Trials are similar. Therefore, all these appeal are being disposed off by this common judgment.

7. We have also heard Mr. Anurag Tiwary, the learned Advocate for the Informant, who has appeared online and Ms. Shashi Bala Verma, the learned APP for the State.

8. The appellants/ Shiv Nath Jha, Shashinath Jha, Krishna Jha, Krishna Chandra Jha, Bhogendra Mishra and Banshidhar Jha stand convicted under Sections 323, 342, 302 read with Section 149 of the Indian Penal Code where as appellants/ Banshidhar Jha, Krishna Chandra Jha, Bhogendra Mishra and Shashinath Jha also stand convicted under Section 147 of the IPC and Appellants/ Shiv Nath Jha and Krishna Jha also stand convicted under Section 148 of IPC, *vide* judgment dated 18.01.2006 passed by the learned



Additional Sessions Judge, F.T.C.-V, Madhubani in Sessions Trial No. 319 of 2002 arising out of Basopatti P.S. Case No. 03 of 2002 (G.R. No. 61 of 2002). By order dated 19.01.2006, they have been sentenced to undergo R.I. for life each for the offences under Sections 302 read with Section 149 of the IPC.

9. The appellants/Santosh Kumar Jha @ Shankar Jha stands convicted under Section 302/149, 147, 323, 354 of the Indian Penal Code, whereas Appellant/ Meena Kumari stands convicted under Section 147, 302/149, 323 and 379 of the IPC *vide* judgment dated 17.03.2016 passed by the learned Additional District & Sessions Judge-VI, Mahdubani in Sessions Trial No. 429 of 2006 arising out of Basopatti P.S. Case No. 03 of 2002 (G.R. No. 61 of 2002). By order dated 18.03.2016, appellant/Santosh Kumar Jha @ Shankar Jha has been sentenced to undergo imprisonment for life, to pay a fine of Rs.50,000/- and in default of payment of fine, to further suffer S.I. for



six months for the offence under Section 302/149 of IPC; to undergo S.I. for one year each for the offence under Sections 147, 354 of IPC and to undergo S.I. for six months for the offence under Section 323 of IPC, where as appellant/Meena Kumari has been sentenced to undergo imprisonment for life, to pay a fine of Rs.50,000/- and in default of payment of fine, to further suffer S.I. for six months for the offence under Section 302/149 of IPC; to undergo S.I. for one year each for the offence under Sections 147, 379 of IPC and to undergo S.I. for six months for the offence under Section 323 of IPC.

10. All the sentences have been ordered to run concurrently.

11. Bikram Kumar Jha @ Ashutosh Bikram Jha is the deceased of this case, who had lodged the FIR on 13.01.2002 at 10:30 hours at the Primary Health Centre, Basopatti. In the aforementioned FIR, he had alleged that at about 07:30-08:00 O' Clock in the



morning on the same day, appellant/Santosh Kumar Jha @ Shankar Jha came along with his associates, variously armed, at his place. Appellant/Shiv Nath Jha was armed with a Bhala whereas appellant/Krishna Jha was carrying a pistol in his hand. Rest all other appellants were armed with lathis. Santosh Jha @ Shankar Jha dragged him and threw him on the ground and also assaulted him by fists and slaps. While doing so, he exhorted his other associates also to assault him. On such exhortation, the other appellants also started assaulting Bikram Kumar Jha @ Ashutosh Bikram Jha (deceased). When he tried to flee away, Santosh Jha @ Shankar Jha held him captive. Seeing all this, the parents of Bikram Kumar Jha @ Ashutosh Bikram Jha came to his rescue, who have been examined as P.Ws. 2 and 3 in S.T. No. 319 of 2002 and as P.Ws. 1 and 3 in S.T. No. 429 of 2002. They were also assaulted by accused persons. Appellant/Meena Devi, wife of appellant/Shiv Nath Jha assaulted the mother of the



deceased and also divested her of her gold chain which she had been wearing. When the mother of the deceased further tried to argue with Santosh Jha @ Shankar Jha, she was abused and was pulled by her hair as a result of which she went into a state of partial dishabille. It was at that time when the deceased got up to save his mother, when appellant/Santosh Jha @ Shankar Jha asked Shiv Nath Jha to assault him. Following his orders, Shiv Nath Jha gave a Bhala blow on the head of the deceased which injured him and he fell on the ground. The kiosk/shop of the deceased was also ransacked and Rs. 2000/- which was kept in the cash box was taken away. Other items/goodies in the shop was also taken away by the miscreants. The life of the deceased could temporarily be saved on the timely arrival of the villagers. However, while the deceased and his parents were about to go to Basopatti hospital for treatment, Santosh Jha @ Shankar Jha, Shiv Nath Jha and Shashi Nath Jha came on a motorcycle and



prevented them from going to the hospital. This infuriated many of the villagers, who protested against such high-handed behaviour of the accused persons. Seeing the irate group of villagers, the appellants are said to have run away. The injured persons came to the hospital where, at the time of lodging of the FIR, treatment was going on. The occurrence was noticed by Kishori Sah, Bhogi Sah and many other persons of the village. The cause of occurrence and the motive behind his assault was the insistence of Santosh Jha @ Shankar Jha to remove his shop from the area which was always protested to by the deceased.

12. On the basis of the aforementioned statement by the deceased Basopatti P.S. Case No. 3 of 2002 dated 03.01.2002 was registered for investigation for the offences under Sections 147, 148, 149, 447, 342, 323, 324, 307, 354, 379 and 504 of the IPC. Later, with the death of the deceased Section 302 IPC was added.



13. It may however be noted that Bikram Kumar Jha @ Ashutosh Bikram Jha died during the course of treatment on 14.01.2002 and post-mortem was conducted on his dead body on 15.01.2002.

14. The deceased was first treated by Dr. Badri Narayan Thakur (P.W. 6), who has stated before the Trial Court that while examining the deceased at 09:15 A.M. on 13.01.2002, he had found one sharp-cut wound on the right side of his head in the frontal part with the dimension of $\frac{1}{2}$ "x $\frac{1}{2}$ "xmuscle deep. There were swelling and redness near the wound. He had advised X-ray of the head. Apart from this, three other injuries were found on the body of the deceased but all in the nature of bruises and abrasions. One bruise was found on the right scapular region while the other was on the right side of the chest. On the right knee also, there was an abrasion. The deceased had only complained of body ache.

15. According to P.W. 6, the sharp-cut



wound would have been caused by a sharp weapon and all other wounds were by hard and blunt substance. On being specifically asked, P.W. 6 responded that the sharp-cut wound could have been caused by a Bhala. On the same day at about 09:25 A.M., he examined the parents and the brother of the deceased and found simple bruises on their persons. About the injuries on the persons of the parents and the brother of the deceased, P.W. 6 had observed that those were absolutely superficial and even muscle deep injuries could be caused by fall on a hard surface.

16. What is important to note in the deposition of P.W. 6, who had first treated the deceased, that on 13.01.2002, the condition of the deceased was not at all abnormal. Precisely for this reason, he was administered first-aid treatment only. There was no necessity felt by him to consult another doctor, who was present in the PHC of Basopatti viz. Dr. Vijay Kumar Chaudhary (P.W. 5). Later, Dr. Vijay



Kumar Chaudhary (P.W. 5) referred the deceased to Sadar hospital, Madhubani, as he found the condition of the deceased had deteriorated. No medicines however were prescribed by him while the deceased remained at Basopatti, PHC. However, he had prescribed life saving drugs to the deceased for the journey from Basopatti to Madhubani hospital. The details of those drugs were not mentioned in his referral note. Normally, such referral would have been made by P.W. 6 as he was the Senior Doctor but in his absence, the reference was made by P.W. 5 only. P.W. 6 learnt later that when the condition of the deceased had become abnormal, he was examined by P.W. 5 and was thereafter referred to Madhubani hospital.

17. It appears that the deceased died sometimes in the afternoon of 14.01.2002.

18. The post-mortem examination was conducted by Dr. Sajjan Kumar Mishra (P.W. 4) at 09:00 A.M. on 15.01.2002. As was expected, he had



found a stitched wound of 2" on the right frontal scalp. The bruises on the scapular region, the left forearm and knees were also discerned by P.W. 4. After removal of the stitch, he found that the wound was bone deep. There was fracture of frontal bone on the right side. The meninges inside the brain were totally lacerated and contained blood and blood clots. The stomach was empty. The time fixed for death was 24 hours before the post-mortem examination.

19. In his opinion, the death was due to hemorrhage and shock as a result of the first wound on the right frontal scalp which appeared to have been caused by hard and blunt substance.

20. A perusal of the evidence of the three doctors, referred to above, reflects that the deceased was not brutally assaulted as alleged.

21. Many persons are alleged by the deceased to have assaulted him and his parents and brother. The parents and brother of the deceased have



suffered only simple injuries. Even injuries suffered by the deceased on his head was found to be simple in nature and therefore, P.W. 6 had only administered the first-aid. There was no excessive bleeding or else blood would have been transfused and referral would have been made to a higher hospital by P.W. 6 only. For some reason or the other, the situation of the deceased worsened, requiring his referral to Madhubani hospital which was done at the behest of Dr. Vijay Kumar Chaudhary (P.W. 5).

22. This signifies that the assault was not with the purpose of killing the deceased or even with the knowledge that such injury would ultimately kill him. During post-mortem, the injury on the head which the prosecution attributes to appellant/Shiv Nath Jha having been caused by a Bhala which he had been carrying in his hand also does not appear to be in sync with the findings of P.W. 4 while conducting post-mortem examination. The injury was by hard and blunt



substance. There were no penetrating or incised wounds. The wound, though, was bone deep and had the impact of crushing the skull and lacerating meninges. This further reflects that perhaps Bhalu was not used with the sharp/pointed part but was used through the blunter part.

23. All this, the learned Advocates for the appellants have argued, reflects as to what actually had happened. According to their proposition, the deceased was not speaking the truth when he made the statement. The cause of occurrence of assault, as told by the deceased in his fardbeyan, was the insistence of one Santosh Jha @ Shankar Jha to remove his shop from the place where it had been erected. The shop perhaps was on a *Gair Mazarua* land. It has been argued that during the course of trial, evidence elicited through the mouth of witnesses revealed that the dispute was for something else and the occurrence was at the spur of the moment. The investigator (P.W. 7)



has categorically stated that after recording the fardbeyan of the deceased, he had visited the P.O. in the village and had found that the shop of the deceased was located at one end whereas a new temple had been constructed at the other end. Somewhere near the shop of the deceased, lay an old temple which perhaps was constructed by the family of the deceased. In between the two temples, there was a public road and beyond the road was the agricultural land belonging to the deceased and the appellant/Shiv Nath Jha. The findings of the investigator at the time of inspection of the village made him understand that perhaps for constructing a store room for the newer temple, which was constructed at the behest of Shiv Nath Jha, a common land was being dug up for construction of plinth, over which the structure could have been erected. There was a dispute with respect to this and assault had taken place between both the parties.

24. Two of the persons from the side of



the accused were found to have been injured viz. Shiv Nath Jha and Shashi Nath Jha. The details of their injuries have not been provided by the investigator but he had seen them with the wounds on their bodies. He had also found that the shop of the deceased was not ransacked at all. In fact, it had not been touched.

25. The argument, therefore, is that the motive and the reason introduced by the deceased himself in his fardbeyan that he was being insisted upon to remove his kiosk, was found to be absolutely incorrect. The dispute basically was over construction of a store room meant for the newer temple built by Shiv Nath Jha. Nobody's land, either of Shiv Nath Jha or of the deceased was being disturbed. It was in the middle of the village road that such a construction was to be made.

26. Was that a rivalry between the two groups of people who had constructed two temples which had led to the attack?



27. There is no evidence whatsoever of any claim over any portion of the land in exclusive possession of the deceased or his family; not even the land over which the kiosk/shop of the deceased was located.

28. Where was then, the learned Advocates have argued, occasion for anybody to insist for removal of the shop of the deceased.

29. In this context, we have also examined the deposition of the family members of the deceased. In Sessions Trial No. 319/2002, the younger brother of the deceased (P.W. 1) though supported the prosecution case but made some different statement with respect to the sequence of events. He attributed the Bhala injury on the deceased to Shiv Nath Jha. Shashi Nath Jha thereafter assaulted the deceased with a lathi on his head. He has also alleged that the cash and other articles kept in the shop were taken away.

30. With respect to the victims being



prevented from going to hospital, P.W. 1 repeated the same story. He has testified to the fact that the condition of his brother (deceased) started deteriorating in the evening of 13.01.2002. On the next day, on the advice of a doctor at Madhubani, the deceased was taken to a hospital at Madhubani on a Maruti vehicle. The condition further deteriorated on way near Kaluahi. Thereafter, the deceased was taken to one Dr. Govind Jha, where the Compounder declared him dead.

31. These facts are not part of the prosecution case.

32. According to the prosecution version, the deceased died in Madhubani hospital. There is nothing on record to indicate that the deceased was brought to Madhubani hospital when he was already dead. The Compounder, who had declared the deceased has also not been examined. The dead body was thereafter taken back home where the police party had arrived and had recorded the statement of the mother



of the deceased viz. Gayatri Devi (P.W. 2). On that statement of Gayatri Devi (P.W. 2), P.W. 1 had also signed. He has confirmed before the Trial Court that the shop of the deceased stood on the Government land. He had no idea whether it was a licensed shop. The shop had been standing at that place for the last three years. There were two temples nearby and there was a brick road at a distance of about 5-7 yards from the old temple. P.W. 1 has but denied any suggestion regarding the dispute having taken place for construction of the plinth of a store room for the new temple.

33. With respect to the manner of assault also, P.W. 1, even though claimed to be an eye witness, was not very specific before the Trial Court.

34. The mother of the deceased (P.W. 2) has also repeated the same story and has also testified to the fact that the deceased was taken to the clinic of Dr. Govind Jha, where he was declared dead. She has also denied that any land was being dug-up near the



new temple which actually was the bone of contention between the two groups of villagers. That the deceased was not very serious when he was assaulted by Shiv Nath Jha gets further confirmed as P.W. 2 had no idea whether the deceased was administered saline water or any medicine.

35. However, in the cross-examination, she has clarified that when the deceased was hit by a Bhala, it did not pierce him. It had only hit him superficially on his head. Similar statements have been made by the father of the deceased/Jata Shankar Jha (P.W. 3). It was a strange co-incidence that at the time of occurrence, he was present in the village though the witnesses have stated that he always remained outside the village for earning his livelihood.

36. On a reading of the deposition of the witnesses, there appears to be some force in the submission of the learned Advocates for the appellants that the motive for the attack was not for forcing the



deceased to remove his shop from the place where it had been erected. The shop was present there for the last three years and there was no past complaint about the same having been erected on a public land. No easement rights of anyone of the villagers was being disturbed. It was not even an obstruction in the passage between the two temples.

37. What was then the flash point on 13.01.2002 for the parties to have fought amongst themselves.

38. The objective finding of the I.O. that the dispute arose when land was being dug-up for construction of plinth thus appears to be the sole cause which had agitated the deceased and his family members.

39. The reason for their being enraged also does not appear to be clear as the land of the deceased or his family was not being consumed nor obstructed.



40. It therefore appears that there was some inhibition and resistance of the family of the deceased, including him about the new temple and the new construction which was meant to be the store room for that temple.

41. Thus, there was no preparedness also for killing anybody.

42. It all started when there was an objection to the digging-up of mud on the village road.

43. There is yet another factor which appears to be petty strange. The occurrence was witnessed by many persons; two of whom have been named by the deceased himself *viz.* Kishori Sah and Bhogi Sah. That they have not been examined could be a lapse on the part of the prosecution, but no other villager coming up to the witness-stand to state as to what had happened on that day is very surprising.

44. It appears to be rather strange that



according to the version of the deceased, when he and his parents and brother were going to Basopatti PHC for treatment of their wounds, they were prevented by three of the appellants. It was only when there was a strong protest by the villagers that they were allowed to go to the PHC, Basopatti. If this were the case, the villagers had all the reasons to state these facts before the investigator who had visited the village even before the deceased had died or for them to have come to the Trial Court to state the actual fact which had led to the occurrence.

45. That the deceased and his parents and his brother had proceeded for Basopatti PHC but without the prosecution giving any detail as to the mode of transport. It appears that the deceased himself was not critically injured.

46. Had he been completely wounded and not in a position to move, the prosecution would have said so, especially when the fardbeyan was recorded by



the deceased himself while he was alive at Basopatti PHC. The police also had arrived there. The investigator had recorded his statement at the PHC only. Nobody had any apprehension that such injuries would lead to his death. The investigator, therefore, without leaving anybody to guard the deceased, proceeded for the P.O. and found the assertions of the deceased to be incorrect.

47. Thus, what can be gathered from all this is that an occurrence had taken place but not with any premeditation or preparedness but at the spur of the moment. The attempt at construction of the plinth for the store room for the new temple perhaps had roused the ire of the deceased and his family members. They must have protested which perhaps had led to a fight between the parties. Tempers normally get frayed if matters relate to one's faith or property. Where the store room was to be constructed fell in nobody's land. It had thus hurt the sentiments.



48. The story of appellant/Krishna Jha being armed with a pistol and Shiv Nath Jha having used a Bhala to kill the deceased thus appears to be absolutely over-exaggerated.

49. We have also examined the deposition of the defence witnesses to get a clearer picture of what actually had happened. It would be rather difficult to accept the deposition of Ram Khelawan Roy and Kanti Khatwe D.Ws. 1 and 2 in Sessions Trial No. 319 of 2002 and Kishori Sah and Kapildeo Sah D.Ws. 1 and 2 in Sessions Trial No. 429 of 2006 that they were witnesses to the occurrence and it had happened because of the dispute over a construction of a store-room near the new temple. They are labourers, who appear to have been brought to the witness-stand at the instance of the appellants.

50. However, we do find the deposition of Dr. Prem Kant Jha, D.W. 3 in Sessions Trial No 319 of 2002 to be of some relevance. He runs a Satyam Poly



Clinic at Madhubani. He had examined Shiv Nath Jha and Shashi Nath Jha. On the person of Shiv Nath Jha, he had found one incised injury of a reasonably big dimension at the back of his neck, which wound was bleeding. There was a traumatic swelling and abrasion on the forearm and on the back of the right shoulder joint. The injuries, of course, were found to be simple in nature. Shashi Nath Jha had also swelling at different places on his body, which appeared to be very traumatic. His injuries also were simple in nature.

51. On cross-examination by the prosecution, D.W. 3 has stated that the first of the injuries *viz.* the incised injury on Shashi Nath Jha could be dangerous to life as it was on the vital part of his body. If this were so and there was a case against the appellants, it is inexplicable to us is that no case was lodged against the deceased or his family members, even though two of the accused persons of this case were injured and their injuries were, if not as dangerous



as the injuries of other injured persons of this case, were similar.

52. Why did Shiv Nath Jha and Shashi Nath Jha not file a case against the deceased and his family members?

53. This poser beckons an answer.

54. The learned Advocates for the appellants have suggested that perhaps nobody by then had any idea that Bikram Jha would succumb to the injuries suffered by him. The injury suffered by all the injured persons were almost of similar nature.

55. It was a village affair and the only reason which could have impelled the accused persons in not lodging any case against the deceased or his family members, would have been to settle the dispute. There was no personal dispute whatsoever. This dispute could have been very well settled. It was only when the deceased got himself admitted in Basopatti Hospital



that his statement was recorded but not with any apprehension that the deceased would die. If there would have been any blood loss making the injuries on the deceased in any manner dangerous to his life, he would have been immediately referred to the higher hospital. The Doctor who first examined him did not find any abnormality.

56. Something must have happened for the situation to deteriorate.

57. There is no evidence of any blood loss. There is no other evidence of any fat embolism.

58. Thus, it was absolutely fortuitous that the deceased died.

59. In the entirety of the circumstances, we find that the conviction of the appellant under Section 302/149 of the IPC is unjustified. There was no common object and no intention of killing anyone much less the deceased.



60. Three persons have been injured apart from the deceased on the side of the prosecution and two persons from the side of the accused persons. The injuries on all of them are similar in nature.

61. After having said that, we find that the attack by Shiv Nath Jha by Bhala proved fatal. That he did not use the pointed part of Bhala reflects his intention of not causing any injury which was actually caused to him. The injury was but otherwise sufficient in the ordinary course of nature to cause death. It did not appear to be so in the beginning, but then, when the autopsy surgeon dissected the skull, he found it to be fractured and the meninges had been lacerated.

62. It can, therefore, be said that the injury inflicted by Shiv Nath Jha was an injury which would have caused the death in ordinary course, as it was on vital portion of the body. However, the question regarding accusation of appellant/Shiv Nath Jha which requires to be answered is whether he had the intention



to cause such an injury or had even the knowledge that the attack perpetrated by him would cause such an injury which might in ordinary course of nature lead to death.

63. We find none.

64. There does not appear to be any intention (of course the assessment is made on the basis of the surrounding circumstances) or the knowledge that a Bhala injury not from the sharper/pointed portion but by a blunt portion, which appeared even to the mother of the deceased to have only caused superficial peeling of the skin over the head.

65. The case of Shiv Nath Jha would thus not even fall under Section 304 of the IPC.

66. At best, appellant/Shiv Nath Jha could be said to have committed an offence punishable under Section 326 of the IPC.



67. Appellant/Shashi Nath Jha and Santosh Kumar Jha @ Shankar Jha were the persons, who according to the deceased, had tried to stop them from proceeding to Basopatti Hospital. Their presence at the P.O. cannot be denied. That three persons from the side of the prosecution have been injured convinces us that the persons present at the spot had participated in the affray.

68. Thus, Shashi Nath Jha and Santosh Kumar Jha @ Shankar Jha would be guilty for the offence under Section 323 of the IPC.

69. With respect to the rest of the appellants, there is nothing on record, concrete enough, to hold that they were present at the spot and that they had participated in the fight. Their conviction even under Section 147 and 148 IPC do not appear to be justified to us.

70. Before ending, we must refer to the arguments of the learned Advocate for the informant



and State as well.

71. Mr. Anurag Tiawry, learned Advocate for the informant has suggested that the absence of any independent person on the witness-stand at the time of Trial was only because of the accused persons being influential and strong men of the village. He has submitted that the fear of the accused persons was so much that no person from the village came to participate in the last rites of the deceased. Appellant/Shantosh Kumar Jha @ Shankar Jha, at the relevant time, was the Mukhiya of the village, who had given a call of boycott of the family members of the deceased. Apart from this, it has been submitted that in any view of the matter, whether there was an expectation of death of the deceased or not, the fardbeyan of the deceased was admissible under Section 32 of the Evidence Act, which cannot be ignored so lightly. According to his submission, the dying declaration of the deceased was good enough to



sustain the conviction of all the appellants for the offence under Section 302/149 of the IPC.

72. None of the grounds raised on behalf of the informant appeal to us for the reasons that such suggestions of the accused persons being strong persons of the locality, instilling fear in the minds of the witnesses, is a statement based on no record and that the statement of the deceased had been taken into account as an admissible piece of evidence under Section 32 of the Evidence Act; but on a careful scrutiny of such statement, we have found that only appellant/Shiv Nath Jha is required be convicted under Section 326 of the IPC and appellants/Shashi Nath Jha and Santosh Kumar Jha @ Sankar Jha under Section 323 of the IPC.

73. All the appellants are on bail as on date.

74. Appellant/Shiv Nath Jha has remained in jail for seven years and eight months. For the offence



under Section 326 of the IPC, we hold that the period of custody undergone by him would be sufficient to meet the ends of justice.

75. Thus, the sentence under Section 326 of the IPC as against appellant/Shiv Nath Jha is declared to be the period of custody in which he has undergone up till now.

76. Appellants/Sashi Nath Jha and Santosh Kumar Jha @ Shankar Jha are also sentenced for the period of custody which they have already undergone up till now for the offence under Section 323 of the IPC.

77. Rest of the appellants are acquitted of all the charges. They are discharged of their liabilities under their bail bonds.

78. All the appeals stand disposed of accordingly.

79. Let a copy of this judgment be



dispatched to the Superintendent of the concerned Jail
forthwith for compliance and record.

80. The records of this case be returned to
the Trial Court forthwith.

81. Interlocutory application/s, if any, also
stand disposed off accordingly.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

manoj/krishna-

AFR/NAFR	AFR
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