

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (SJ) No.438 of 2015**

Arising out of PS. Case No. -152 Year- 2010 Thana -KHARIK District- BHAGALPUR

1. Abhishek Thakur @ Abhishek Bharti son of Arun Thakur @ Arun Kumar Thakur.

2. Raju Thakur Son of Late Chhanguri Thakur

3. Kako Thakur @ Jeevan Thakur Son of Rai Thakur.

All resident of village- Kharik Bazar, Usmanpur Tola, P.S.- Kharik, District- Bhagalpur.

.... .... Appellant/s

Versus

The State of Bihar

.... .... Respondent/s

With

**Criminal Appeal (SJ) No. 481 of 2015**

Arising out of PS. Case No. -152 Year- 2010 Thana -KHARIK District- BHAGALPUR

Arun Thakur @ Arun Kumar Thakur Son of Mahendra Thakur @ Birendra Thakur, Resident of village- Kharik Bazar, Usmanpur Tola, P.S.- Kharik, District- Bhagalpur

.... .... Appellant/s

Versus

The State of Bihar

.... .... Respondent/s

**Appearance:**

(In CR. APP (SJ) No.438 of 2015)

For the Appellant/s : Mr. Shivendra Prasad, Adv.

For the State : Mr. Bipin Kumar, APP

(In CR. APP (SJ) No.481 of 2015)

For the Appellant/s : Mr. Shivendra Prasad, Adv.

For the State : Mr. Bipin Kumar, APP

**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**

**ORAL JUDGMENT**

**Date: 05-04-2018**



Criminal Appeal (SJ) No.438 of 2015 wherein Abhishek Thakur @ Abhishek Bharti, Raju Thakur, Kako Thakur @ Jeevan Thakur are the appellants and Criminal Appeal (SJ) No. 481 of 2015 wherein Arun Thakur @ Arun Kumar Thakur is the appellant commonly originate against the judgment of conviction dated 29.06.2015 and order of sentence dated 08.07.2015 passed by Second Additional Sessions Judge, Naugachia, Bhagalpur in Sessions Trial No.538/2011 on account thereof, have been heard together and are being decided by a common judgment.

**2.** Appellants, Abhishek Thakur @ Abhishek Bharti, Raju Thakur, Kako Thakur @ Jeevan Thakur, Arun Thakur @ Arun Kumar Thakur have been found guilty for an offence punishable under Section 147 IPC and sentenced to undergo S.I. for two years, under Section 148 IPC and sentenced to undergo S.I. for two years, under Section 323 of the IPC and sentenced to undergo S.I. for one year, under Section 324 of the IPC to undergo S.I. for three years, “to undergo S.I. for four years for an offence punishable under Section 149 IPC”, to undergo S.I. for four years for an offence punishable under Section 325 of the IPC, S.I. for two years under Section 504 of the IPC and Arun Thakur has separately been found guilty for an offence punishable under Section 307 of the IPC and sentenced to undergo S.I. for ten years as well as to pay fine appertaining to rupees five thousand and in default thereof, to undergo S.I. for three months, additionally with a further direction to run the sentences concurrently.

**3.** Before proceeding ahead, the judgment impugned



suggests that either the learned lower court had acted in mechanical manner or he has no judicial approach and that happens to be reason behind that same accused has been convicted for the offence punishable under Section 147 IPC as well as under Section 148 of the IPC which ought not to be. In likewise manner, the learned Presiding Officer failed to construe that Section 149 did not attract sentence independently rather it deals with vicarious liability of an individual being member of an unlawful assembly during course of commission of the crime and so, is to be governed by the main offence for which, there was an unlawful assembly possessing common object. Furthermore, the accused having been charged under Section 147 IPC would not be found guilty for an offence punishable under Section 324 IPC. So, the learned Presiding Officer is requested not to indulge in such kind of activity henceforth while delivering judgment and for that office is required to serve a copy of judgment upon the P.O. concerned. Apart from this, the learned lower court also failed to incorporate the defence, the materials having placed in defence and by such activity, shown inadaptability.

**4.** Manoj Thakur, PW.5 gave his fardbeyan on 18.12.2010 at about 03:00 PM at his village-Kharik Bazar disclosing therein that on the same day at about 02:30 PM while he was sitting at his Darwaja, his co-villager Arun Thakur, Abhishek Thakur, Kunal Thakur came and began to abuse which was protested by him and during course thereof, Arun Thakur who was armed with spade gave blow, causing injury over his hand, face, wherefrom blood had oozed out. His son Pappu Thakur (PW.1) and daughter-in-law Rekha Devi



(PW.2) came in rescue who were assaulted by Arun Thakur, Abhishek Thakur and Kunal Thakur. Then thereafter, Raju Thakur and Koko Thakur joined them who assaulted his wife Punam Devi. The motive for the occurrence has been shown as the accused alleges that his son, daughter-in-law abuse them whenever they gone over their roof. After registration of Kharik P.S. Case No.152/2010 police took up investigation, and after concluding the same, charge sheet was submitted facilitating the trial, meeting with the ultimate result, subject matter of instant appeal.

**5.** Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial of the occurrence. Furthermore, it has also been pleaded that the land of the accused lies adjacent to the house of the informant over which, the prosecution party has got evil eye and in the aforesaid background, this case has falsely been filed at the end of the prosecution. Three DWs have also been examined to substantiate the same.

**6.** In order to substantiated its case, prosecution had examined altogether ten PWs who are PW.1-Pappu Thakur, PW.2-Rekha Devi, PW.3-Fucho Kumar, PW.4-Suman Devi, PW.5-Manoj Thakur, PW.6-Dr. Sudhanshu Kumar, PW.7-Dr. Dilip Kumar Singh, PW.8-Ajay Sah, PW.9-Md. Mansoor Alam and PW.10-Subodh Kumar.

**7.** Side-by-side also exhibited Ext.1-Signature of PW.1 over fardebeyan, Ext.1/1-Fardbeyan, Ext.1/2-Endorsement over fardbeyan, Ext.2 Series-Injury report of respective injured Manoj



Thakur, Pappu Thakur, Rekha Devi, Ext.3-Discharge bed head ticket. Although, no documentary has been adduced on behalf of accused /appellant however three DWs have been examined who are DW.1-Shankar Pandit, DW.2-Krishna Mohan Pandit, DW.3-Abdul Bari.

**8.** While assailing the judgment of conviction and sentence, it has been argued on behalf of learned counsel for the appellants that none of the independent witnesses so named in the charge sheet has been examined in this case nor there happens to be any kind of explanation at the end of the prosecution for their non-examination. That means to say, whoever been examined are own family members, being inimical one whereupon their evidences should be brushed aside. So, it happens to be a case of no evidence. That means to say, the judgment of conviction and sentence recorded by the learned lower court is found not at all substantiated by cogent, reliable, trustworthy evidence.

**9.** It has also been submitted that the manner wherein the learned lower court had dealt with the evidence is indicative of the fact that it had acted in mechanical manner and that being so, there happens to be fault at the end of the learned lower court while appreciating the evidence of doctor inconsonance with the ocular evidence which are inconsistent to each other shaking credibility of the prosecution case. So, in sum and substance, the evidences whatever been adduced on behalf of prosecution is found deficient one to justify the finding having been recorded by the learned lower



court.

**10.** In its continuity, it has also been submitted that two independent witnesses that means to say PW.8 and PW.9 have not supported the case of the prosecution in a way as flashed along with the fact that PW.10 Investigating Officer, during course of recording of objective finding relating to the place of occurrence also cast suspicious over the manner of occurrence as flashed by the prosecution and that being so, the cumulative, effect did not justify the judgment impugned. So, is fit to be set aside.

**11.** On the other hand, the learned Additional Public Prosecutor while supporting the finding recorded by the learned lower court has submitted that PW.1, PW.2, PW.3, PW.4, PW.5 who, apart from own family members, are the injured and so, being an injured they possessed special category and in usual phenomena their evidences are not to be brushed aside. Furthermore, it has also been submitted that when the evidence of all the injured is taken together in its entirety inconsonance with the objective finding recorded by the PW.10, the place of occurrence is found duly substantiated and in likewise manner, manner of occurrence. Furthermore, evidence of PW.6 reaffirms the allegation whatever been attributed at the end of the injured witness that being so, the judgment of conviction and sentence recorded by the learned lower court is fit to be confirmed.

**12.** PW.6, Dr. Sudhanshu Kumar had examined all the injured on 18.12.2010 at 04:45 and onward and found the



following:-

**(A) Manoj Thakur**

- i. One lacerated wound  $\frac{1}{2}$ " x  $\frac{1}{4}$ " x muscle deep with swelling and tenderness on left upper arm.
- ii. Abrasion  $\frac{1}{2}$ " x  $\frac{1}{4}$ " on right eyebrow.
- iii. Tenderness right side waist.

X-ray left upper arm advised and referred to J.L.N.M.C.H., Bhagalpur.

Type of injury:- Opinion reserved for injury no.(i) and for injury no.(ii) and (iii) are simple in nature and are caused by H.B.S.

Duration:- Approximately within 12 hours of examination.

**(B) Pappu Thakur**

- i. Abrasion 2" x  $\frac{1}{2}$ " left forearm.
- ii. Abrasion 2" x  $\frac{1}{2}$ " right side of waist.
- iii. Abrasion 1  $\frac{1}{2}$ " x 1" on left shoulder

Size of injury:-All are simple in nature and caused by hard and blunt substance.

Duration:-During 12 hours on the date of examination.

**(C) Rekha Devi**

- i. One sharp cut wound  $\frac{3}{4}$ " x  $\frac{1}{6}$ " x bone deep on anterior part of scalp.



ii. One sharp cut injury 1.4" x 1/8" x skin deep on middle finger right hand.

iii. Abrasion 1" x 1" on both knee.

Injury no.1 and 2 caused by sharp cutting edge.

Injury no.3 by HBS. All injuries are simple in nature.

Duration:- Within 12 hours of examination.

**13.** Furthermore, it is evident that PW.5, informant was referred to specialized centre whereupon, he got himself admitted at J.L.N.M.C.H, Bhagalpur on the same day i.e. 18.12.2010 and was operated upon as there was fracture of his hand and to extent, PW.7, Dr. Dilip Kumar Singh had substantiated the same by exhibiting Discharge Cum Bed Head Ticket, Exhibit-3.

From the cross-examination of PW.6, it is evident from para-5, 6, that injury over Rekha Devi might be on a fall over broken glass and rest injury, on fall over hard and blunt substance and in likewise manner with regard to the injuries of Pappu Thakur and the Manoj Thakur.

**14.** In the aforesaid eventuality now the evidences are to be seen.

**15.** PW.5 is the informant/one of the injured. He had deposed that on 18.12.2010 at about 02:30 PM while he was sitting at his Darwaja, Arun Thakur, Kunal Thakur, Abhishek Thakur, Raju Thakur, Koko Thakur came, armed with lathi, spade and wooden plank. Arun Thakur gave spade blow over his head which caused



injury over his forehead, hand. Blood oozen out. Arun Thakur again repeated the blow over his waist as a result of which, he fell down. Then again Arun Thakur gave third blow which he tried to prevent by his hand resulting fracture. Abhishek assaulted his son Pappu Thakur with wooden plank. The nail having over the plank pierced in his body as a result of which, blood oozen out. He was also assaulted over his left elbow, head. There was fracture over head. The wound was stiched. Accused persons inflicted the blow with an intention to kill. His younger son Fucho Thakur was caught hold by Kunal Thakur and then, was thrown away in a drain as a result of which, he sustained injury over his right thigh. His wife was assaulted by Koko Thakur with lathi after having been dragged from a handpipe where she was taking bath, to the road where, she was thrown over and then, Koko Thakur pounced upon her and pressed as a result of which, blood came out from her mouth. His wife was also assaulted with *lathi*. His daughter-in-law Rekha Devi was dragged from her Verandah, thrown over on the ground and then, was assaulted with *lathi* as well as fist and slap. Her injuries were also stitched. Then thereafter, they rushed to police station where he gave his fardbeyan. Then were sent to hospital where his son and daughter-in-law were treated. He was referred to Bhagalpur. The accused persons are still threatening to withdraw the case. Identified the accused. During cross-examination at para-3, he had stated that at an earlier occasion his Bhabhi was murdered by the accused Arun Thakur and others wherein have gone to Jail. That case is over. In para-4 he had stated that his house lies over Khesra No.3409



appertaining to Khata No.2698 having recorded in the State of Bihar. His house stood over the aforesaid land since last 40-50 years. He has filed application for settlement. He had further stated that he has got no land dispute with Arun. He had further stated at para-5 that his Bari lies over Khesra No.2700 appertaining to Khata no.2531. Khatian happens to be in his name. Then had stated that while he was sitting alone at his *Darwaja*, accused persons came. *Darwaja* is opened from all side. His residential house lies adjacent north to *Darwaja*. His wife was taking bath over the hand pipe. The same happens to be adjacent south to his residential house. Then had stated that Arun Thakur had given three spade blows. Two times it was from the back side while during third attempt, it was from edge side. Then thereafter, he was assaulted with fist and slap. He had further stated that son, daughter-in-law were firstly assaulted and then, he was assaulted. He had further asserted that he had not became unconscious but his wife had. However, regained sense on the same day. After assault by fist and slap, none were assaulted. He had further stated that spade was taken away by the police from the place of occurrence. At that very time, he was not along with police. The nail having over the wooden plank had inserted inside the body of his son. Fucho Thakur was lifted and then, was thrown in a drain by Kunal Thakur. At para-6 he had further stated that firstly he was assaulted, then his son and then his daughter-in-law and then his wife. Because of the fact that he after sustaining spade blow, fell down and was not in a position to resist on account thereof, he had not tried to save any body. After



the occurrence, two persons lifted him. In para-7 he had stated that so many persons assembled but he was very much perplexed on account of assault so, he is unable to name them. In para-8 he had stated that they were taken to police station and there from to hospital. In para-9, he has again been cross-examined over the land whereupon he had stated that during revisional survey it has been recorded in name of State of Bihar but it happens to be recorded at an earlier occasion in name of his grand father. He had not drawn up any civil suit for correction of the same. He was not aware with the fact that eight decimals which stood recorded in name of State of Bihar has been settled in favour of Arun Thakur. Then had denied the suggestion that he had constructed house encroaching upon the land of Arun Thakur. In para-10 he had stated that he had not made statement before the police that the land of Arun Thakur lies adjacent to his land. At para-12 there happens to be contradiction relating to his further statement. In para-13 he had stated that Rekha Devi is the wife of Arun Thakur. They have not assaulted her. Then again there happens to be contradiction relating to further statement then at para-14 there happens to be suggestion that in order to grab the land, this false case has been instituted.

**16.** PW.1 is the son, one of the injured who during course of examination-in-chief had stated that on the alleged date and time of occurrence, he was at his house. His mother was taking bath at the hand pipe. At that very time, Arun Thakur was moving in his Bari, was protested by his wife Rekha Devi, became enraged, abused and then, was jointed by Abhishek Thakur, Kunal Thakur, Raju



Thakur, Koko Thakur. His father was assaulted by spade repeatedly as a result of which there was fracture of his hand as well as also sustained injury near his eyebrow. Two spade blow was given over waist of his father. The aforesaid blows were given by Arun Thakur. He was assaulted by Arun Thakur, Kunal Thakur and Abhishek Thakur as a result of which, he sustained injuries over his left hand near elbow, on neck left side, right intercostals region, by the wooden plank having a nail which pierced inside his body. There was stitch over those injuries. Also sustained injury over his head. He was also assaulted by lathi all over his body. His wife Rekha Devi was dragged by Arun Thakur, Kunal Thakur and Abhishek Thakur and then was brutally assaulted even with the spade. She sustained injuries over her head, neck, near knee of both the legs. Chain was also snatched away. His mother was also dragged and then was assaulted after throwing her over road. His younger brother Fucho Thakur was also assaulted by Arun and Abhishek. They also threw him in a drain causing injury thereupon. They were taken to hospital where his father, wife he himself were treated. His father had recorded fardebeyan whereupon he had put his signature. Identified the accused. During cross-examination at para-2 he had stated that Bari belongs to him which has been recorded in the name of State of Bihar. Land of Arun Thakur does not lie by the side of his house. All the accused persons came jointly at his *Darwaja*. At that very time, he along with his wife was inside the house. His father was sitting at the *Darwaja*. When he came out, his father was being assaulted. At that very time, hand of his father was not fractured. Accused



persons have hurled 8-10 spade blows out of which 3-4 blows struck over body of his father. All the strokes were given forcefully with an intention to kill. His father after sustaining injuries had not become unconscious. He was assaulted while he had gone to rescue his father. He had further stated at para-3 that so many persons were present and named some of them as Md. Santu, Md. Barabar, Md. Sadab. During course of saving his father, he was given 8-10 *lathi* blows. Arun Thakur also assaulted by spade blow over him but he escaped. Then, thereafter, he was assaulted by wooden plank 4-5 times 8-10 times by *lathi*. Then had stated that clothes were soaked with blood which was taken away by the police. He had stated that first of all accused persons threw her on road and then, one spade blow was given by Arun Thakur at 4-5 places. His mother was not assaulted by *lathi* rather she was thrown over the road as a result of which, she sustained injury over chest. Blood had oozen out from her leg. At para-6 he had stated that no case was pending with the accused persons relating to land nor a proceeding under Section 107 of the Cr.P.C was ever initiated.

**17.** PW.2 is the daughter-in-law who had deposed that on the alleged date and time of occurrence Arun Thakur, Kunal Thakur, Abhishek Thakur, Raju Thakur, Koko Thakur came at her *Darwaja* from her Bari where her father-in-law was sitting since before and demanded rupees ten thousand which was declined by her father-in-law whereupon, Arun Thakur and Abhishek Thakur began to assault. Arun Thakur gave spade blow while Abhishek Thakur assaulted him with wooden plank, rest three accused persons also



assaulted as a result of which there was fracture of his hand. There was head injury. Blood had oozed out. On account thereof, injuries were caused over different parts of body. Her husband was assaulted by wooden plank having nail which pierced inside causing injury, she was assaulted by Abhishek Thaur and Koko Thakur after dragging from over her Verandah. They also outraged her modesty. she sustained injury due to assault. Her mother-in-law was assaulted by Raju Thakur. She was thrown over the road. Then thereafter, they all have gone to police station wherefrom hospital she along with her father-in-law husband were treated. During cross-examination at para-2 she had stated that first of all Arun Thakur came at her *Darwaja* and thereafter he was joined by other accused persons. At that very time she was along with her husband inside her house. Her husband was taking meal. When Arun Thakur began to assault her father-in-law thereupon, she along with her husband had gone there. At that very time, her mother-in-law was changing cloth after bath and during midst thereof, she was dragged and assaulted. Arun Thakur had caught hold her mother-in-law she was caught hold by Abhishek and Raju Thakur. At that very time she was dragged from *Darwaja*. She along with her mother-in-law had not gone near father in law as they were dragged by the accused persons to road. Her husband was assaulted. Police came, took away blood stain soil. She was unable to disclose names of the villagers who had assembled there. She is unable to disclose names of the person who took them to police station and then to hospital. At para-4 she had stated that she is unable to disclose whose land lies. At



para-5 there happens to be contradiction. Then had stated that Arun Thakur had forcibly fenced the land lying east to house since before her marriage. Then had stated that mother of Arun Thakur and Abhishek thakur also assaulted her along with her mother-in-law. Uma Devi or Abhishek had not sustained injury during course of aforesaid scuffle. Then had denied the suggestion that they assaulted Abhishek and Uma Devi while trying to grab the land and for that this case has been falsely been instituted.

**18.** PW.3 is the Pacho Kumar who at the time of occurrence was about eleven years. During course of examination-in-chief he had reiterated the allegation and so far his assault is concerned, he had asserted that he was lifted by Arun Thakur and Abhishek Thakur who thrown him in a drain. Identified the accused in dock. During cross-examination at para-2 he had stated that there happens to be no land dispute amongst his father as well as Abhishek Thakur. Then had stated that even after seeing the accused persons duly armed, he had not escaped therefrom. First of all, his father was assaulted by spade but he is unable to say how many blows were given upon his father and in likewise manner he is unable to say how many *lathi* blows were given by Koko. He was thrown in a drain and during course thereof, he was also assaulted blood had oozen out from injury. In para-5 he had stated that he had not counted how many ever were given over his brother. His mother who was taking bath was dragged by Koko and Raju over road and then assaulted. In likewise manner, his Bhabhi was also dragged from the house. He is unable to say how many blows were given.



Arun Thakur assaulted with spade. While escaping therefrom, spade was left which was taken by the police. They were taken to police station and then to hospital.

**19.** PW.4 is another injured who during her examination-in-chief had stated that at the time of occurrence she was taking bath at her hand pipe. Koko thakur, Raju Thakur, Arun Thakur, Abhishek thakur, Kunal thakur came and dragged her to Darwaja and then Arun Thakur and Koko thakur threw her as a result of which she sustained injury over her chest. Her mouth became full of blood. Accused persons had also assaulted her husband as a result of which there was injury over his head as well as fracture of his hand. Her son was assaulted by Kako, Abhishek and Arun Thakur as a result of which he has sustained over his hand waist and other parts of body. Her daughter-in-law Rekha was also assaulted. Her younger son was thrown away as a result of which he also sustained injury. They all were taken to police station and then to hospital. During cross-examination she had stated that she was taking bath in her Bari lying adjacent to her Darwaja. She was dragged from Bari to her Darwaja where she was threw over the ground and then assaulted. In para-3 she had stated that there was assaulted by the lathi she was unable to disclose the blow. Her husband was assaulted. In para-4 she had stated that he was assaulted. He was given 4-5 lathi blow also assaulted by wooden plank. Arun Thakur had not given spade blow over her son. In para-5 she had stated that she was thrown over the ground as a result of which she sustained injury over her head. Blood had oozen out from the injuries. There



was blood spread over the road. They have gone to the police station. Then to hospital. She was also treated. Then at para-6, 7, 8 there happens to be contraction. In para-10 she had stated that first of all her statement was recorded then her daughter-in-law then, her son and then her husband. Then had denied the suggestion that no such type of occurrence had taken place rather this false case has been filed only to grab the land.

**20.** PW.8 had not claimed to know about the occurrence whereupon was declared hostile. PW.9 had stated that there happens to be land dispute amongst Manoj Thakur and for that, quarrel took place. In the aforesaid background Manoj Thakur was litigating with the Arun Thakur. He had further stated that Abhishek Thakur had sustained injury who was assaulted by Manoj Thakur. He had further stated that police had not recorded his statement whereupon he was declared hostile. During cross-examination he had stated that east to the house of Manoj Thakur, land of Arun Thakur lies whereupon there happens to be garage. Manoj Thakur always indulged in quarreling with Arun Thakur in order to grab the aforesaid land.

**21.** PW.10 is the Investigating Officer. He had stated that on the alleged date he had recorded fardbeyan of Manoj Thakur exhibited all the concerning document. After registration of the case, he recorded further statement of the informant. Issued injury report. Also recorded statement of Pappu Thakur. Issued injury report, recording statement of Rekha and issued injury report thereto. He had visited the place of occurrence being north to the house of



informant which happens to be a road having boundary North-Md. Saheb, South-House of the informant, East-West road. He had recorded statement of the witnesses. Conducted raid to apprehend accused who were found absconding. Procured injury report. Received supervision note and then had submitted charge sheet. During cross-examination at para-9 he had stated that he had not found blood at the spot. He had not seized blood stain soil. He had not seen blood stain cloth of any of the injured. He had recorded statement of the independent witnesses whose presence happens to be in the charge sheet. In para-11 he had stated that he is unable to say whether land of accused Arun Thakur lies at eastern boundary of informant. Then there happens to be contradiction relating to witness Pappu at para-13, 14, 15, 16 with regard to Rekha para-17, with regard to Pancho at para-18 and with regard to Punam Devi para-19.

**22.** DW.1, DW.3 have been examined on the score of having the land of Arun Thakur adjacent east to the house of the informant, Manoj Thakur. DW,2 happens to be formal in nature who had exhibited sale deed executed by Radha Devi and others Ext.A, rent receipt, Ext.B Series. The aforesaid sale deed Ext.A relates with survey plot no.2698 and 2699 lying under khata no.3409 as well as 1365 respectively. The sale deed happens to be of the year 1985.

**23.** From the evidence, as is available on the record, more particularly PW.5 para-4, it is apparent that during cross-examination he had disclosed khata no.2698, khesra no.3409 regarding which, it has been asserted that during course of



revisional survey operation it has been recorded in the name of State of Bihar thought his house stood over the same for the last fifty years, at para-5 he had stated that the RSP of his Bari happens to be 2700 lying under Khata No.2531. When paragraph 9 is taken on this score, he had stated that this land happens to be recorded in the name of State of Bihar but earlier it was recorded in name of his grandfather. During revisional survey operation the aforesaid mistake has been committed and to rectify the same, he has not filed civil suit and then, it has been suggested that eight decimals of the land which has been recorded in the name of State of Bihar has been taken on settlement by Arun Thakur over which he had shown ignorance. Then he had denied the suggestion that he had constructed his residential house and so, this case has been instituted to desist them from claiming the same encroaching part thereof. In the aforesaid background, Ext.A appears to be of no use and in likewise manner Ext.B Series which happens to be rent receipt with regard thereto.

**24.** That means to say the defence version claiming the land is found inconsistent one. From the evidence it is evident that that there happens to be some sort of exaggeration in the evidence of PW.8, which in the facts and circumstances of the case appears to be normal one in the background of the fact that the witnesses came from lower strata as well as were deposing after so many years of the occurrence. Had there been a parrot like statement then in that circumstance, it would have given an impression of tutoring. However, zest of the evidence that means to say the evidence in its



entirety let inspiration with regard to truthfulness of the allegation that an occurrence took place on 18.12.2010 wherein the prosecution party were brutally assaulted supported by medical evidence.

**25.** An attempt was taken at the end of the appellant that appellant Abhishek and his mother were assaulted and to that extent PW.9 had also deposed but, neither any of the witnesses were suggested that they sustained injuries at different place, in different manner and for that any case was instituted.

**26.** Evidence of injured witnesses unless and until is found soaked with falsehood, is to be accepted in its entirety.

**27.** In **Chandrasekar & Anr. vs. State of Tamil Nadu** reported **in 2017 (4) PLJR (SC) 220**, it has been held by the Hon'ble Apex Court:-

“10. Criminal jurisprudence attaches great weightage to the evidence of a person injured in the same occurrence as it presumes that he was speaking the truth unless shown otherwise. Though the law is well settled and precedents abound, reference may usefully be made to **Brahm Swaroop vs. State of U.P.**, (2011) 6 SCC 288 observing as follows:

“**28.** Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with an in-built guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order



to falsely implicate someone.”

**28.** That being so, the appellants have rightly been found guilty for an occurrence having committed at their end on 18.12.2010. But considering the evidence available on the record, more particularly, of the injured witnesses, it is evident that there was no intervening circumstance and had there been an intention at the end of the appellants including that of Arun Thakur to cause murder then in that circumstance, PW.5 Manoj would not have been spared. So the conviction and sentence recorded under Section 307 of the IPC has not found substantiated. In likewise manner, the evidence relating to Section 504 of the IPC is also not found to be appropriate as to that extent, the evidence of the witnesses is found deficient one. So far proper identification of individual appellant for an offence punishable under sections 147, 148 of the IPC is concerned, it is evident from the format of the charge that they all have been charged for an offence punishable under Section 147 IPC as well as 148 IPC and on that very score, considering the status of the appellant Arun Thakur who was armed with spade is only held guilty for an offence punishable under Section 148 IPC while remaining under Section 147 of the IPC. In likewise manner, all the appellants are found and held guilty for an offence punishable under Section 323/149 IPC, 324/149 IPC as well as 325/149 IPC retaining the sentences having inflicted thereupon with a further direction to run the sentences concurrently and in terms thereof, the finding having recorded by the learned lower court is modified.



**29.** Accordingly, appeal is partly allowed. Appellants is on bail, their bail bonds are cancelled directing them to surrender before the learned lower court within fortnight to serve out remaining part of sentence, failing which the learned lower court will be at liberty to proceed against the appellants in accordance with law.

**(Aditya Kumar Trivedi, J.)**

Prakash Narayan

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