

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.186 of 2009

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1. Sahdeo Ram son of late Banwari Rameshwar.
 2. Dharmendra Ram
 3. Jitendra Ram
 4. Upendra Ram, both sons of Sahdeo Ram
 5. Ram Pravesh Ram son of Ghurphekan Ram
 6. Dinesh Ram son of Gudari Ram
 7. Bihari Ram son of late Sahadur Ram
All resident of village-Siswar, P.S.-Sabar (Karamchat), district
Kaimur at Bhabhua.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Dr. Amrendra Kumar, Adv.
Mr. Tribhuwan Narayan, Adv.
For the Respondent/s : Mr. Parmeshwar Mehta, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 17-12-2018

1. Appellant Sahdeo Ram has been found guilty for an offence punishable under Section 148 IPC and for that, no separate sentence has been inflicted, under Section 324 IPC and for that he has been directed to undergo S.I. for two years, while remaining appellants, namely, Dharmendra Ram, Upendra Ram, Jitendra Ram, Ram Pravesh Ram, Dinesh Ram, Bihari Ram have been found guilty for an offence punishable under Section 147 of the IPC and for that, no separate sentence has been inflicted, under Section 323 of the IPC and each one has been sentenced to undergo S.I. for six months vide judgment of conviction and order of sentence dated 27.02.2009 passed by Additional Sessions



Judge, FTC-2, Kaimur (Bhabhua) relating to Sessions Trial No.240 of 2010/10 of 2007.

2. Rameshwar Ram (PW.8) while was admitted at PHC, Chenari on 09-03-2004 at 02:00 PM gave his fardbeyan alleging inter alia that on the same day at about 09:00 AM when he came out from his house, he had seen Sahdeo Ram, Dharmendra Ram, Jitendra Ram, Upendra Ram, Ram Pravesh Ram, Dinesh Ram, Bihari Ram engaged in digging plinth. Seeing the same, he inquired why they were digging beyond the measured area. Sahdeo began to abuse and then, all of them brought lathi, farsa, chased and attacked upon him. He tried to run therefrom, but Sahdeo Ram gave farsa blow over his head causing injury thereupon. Blood oozen out. He fell down. Then thereafter, others also began to assault with lathi. On his alarm, his grandson Mahendra and Nandu Ram came in rescue who were also assaulted by them. His nephew Ram Kishore Ram and wife of his younger brother namely, Bilatani Devi came in rescue who were also assaulted. Villagers rushed in rescue seeing whom, the accused persons fled away. Then thereafter, all the injured have been taken to Chenari, PHC for treatment where they were being treated.



3. After registration of Bhagwanpur (Karamchat) P.S. Case No.24/2004 investigation commenced and concluded by way of submission of charge sheet, facilitating the trial, meeting with the ultimate result, subject matter of instant appeal.

4. 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. Further, it has also been pleaded that land in question was illegally claimed by the prosecution party whereupon were protested. They have tried to encroach over the same which was resisted by the appellants whereupon, they assaulted and for that, counter case has been registered. However, neither oral nor documentary evidence has been adduced on behalf of appellant/accused though presence of counter case has been admitted by the prosecution witnesses.

5. In order to substantiate its case, prosecution has examined altogether eleven PWs who are PW.1-Dadan Ram, PW.2-Basant Ram, PW.3-Dashrath Ram, PW.4-Ghurbhari Ram, PW.5-Ram Kishore, PW.6-Nandu Ram, PW.7-Mahendra Ram, PW.8-Rameshwar Ram, PW.9-Bilatani Devi, PW.10-Dr. Rahit Chandra Jha, PW.11- Subhash as well as has also exhibited, Ext.1 to 1/7-Injury report of respective injured Rameshwar Ram, Bilatani Devi, Mahendra Ram, Ram Kishore Ram, Nandu Ram,



Ext.2-Fardbeyan, Ext.2/1-Formal FIR. Nothing has been adduced in defence at the end of the appellants/accused.

6. Learned counsel for the appellants has submitted that the judgment of conviction and sentence recorded by the learned lower court could not survive on account of inherent infirmities persisting therein. Highlighting the same, it has been submitted that there happens to be inconsistency amongst the witnesses with regard to digging of plinth that means to say over genesis of occurrence. I.O. has not been examined which ought to be, as some of them have stated that plinth was not being dug while some have stated that it was and that too, covering considerable length. Furthermore, it has also been admitted by some of the witnesses that blood had spread over on the ground at the place of occurrence coming out from the injuries of Rameshwar. In the aforesaid background examination of I.O. was necessary. Had there been examination of the I.O., the digging of plinth would have properly been exposed much less proper identification of land. In likewise manner, it has also been submitted that this case has been instituted at the instance of the prosecution party taking the police in their collusion and that happens to be reason behind presence of some sort of overwriting at column 3 of the formal FIR. Had there been examination of the



I.O., his attention would have been drawn up with regard to aforesaid theme. It has also been submitted that the FIR has been received at the office of the learned CJM on 15.03.2004. Had there been examination of the I.O., the appellant would have been in a position to cross-examine him with regard to the reasons whereunder FIR was received after such long delay, in contravention of Section 157 of the Cr.P.C. That being so, it has been submitted that presence of injuries over the persons of the prosecution witnesses are one circumstance but, the aforesaid infirmity persisting on the record could not be brought up on record on account of non-examination of the I.O. which, the prosecution knowingly, intentionally withheld and that being so, caused serious prejudice to the appellant and in likewise manner, a serious dent in the prosecution case whereupon, the judgment of conviction and sentence is liable to be brushed aside. Apart from this, it has also been submitted that the same has got relevance in the background of the fact that the PW.8 the informant during his cross-examination at para-10 has stated that police had come on the date of occurrence itself at the P.O. in his presence. Police came at 12 noon. Police had seen the aforesaid plinth having been dug, the blood having been spread over. Police had inspected the aforesaid thing for one and half hour and then, police returned



back over the jeep and then, he gone to Baithka. Aforesaid disclosure found sufficient to irruptive the prosecution case, as flashed being after thought in the background of presence of counter case.

7. It has also been argued that it happens to be a settled principle of law that prosecution must come with clean hand. From the evidence available on the record, it is evident that prosecution has not come with clean hand and that happens to be reason behind that examination of I.O. has been withheld so that, prosecution be able to conceal the real version of the occurrence. Non appreciation by the learned lower court makes the finding inappropriate, attracting interference by getting the same, set aside.

8. Furthermore, it has also been submitted that because of the fact that witnesses have changed the manner of occurrence, genesis of occurrence, on account thereof, the injuries whatever may be would not give a life breath to the prosecution and that being so, the judgment of conviction and sentence recorded by the learned lower court happens to be bad, illegal, cryptic and is fit to be set aside.

9. On the other hand, the learned Additional Public Prosecutor counter-meeting with the submissions raised on behalf



of learned counsel for the appellants has submitted that there should not be appreciation of evidence in piecemeal manner nor in a way of mathematical calculation. The evidence in its entirety is to be seen. The court has to take into consideration so many factors while appreciating the evidence of a witness more particularly, suffering from illiteracy as well as, coming from lower strata of the society whereupon their mental capacity, could not match even to normal understanding apart from delay in their examination. In the aforesaid background, when the evidences are being properly scrutinized, it is evident that zist of the allegation whatever been alleged since initial version against the accused/appellants are found intact whereupon, the finding of the lower court did not attract interference. Slight variance happens to be natural one more particularly in the background their examination after so many years from the date of the occurrence without going to root. That being so, the finding so recorded by the learned lower court is fit to be confirmed.

10. PW.10 is the doctor who had examined the respective injured on 09-03-2004 while he was posted as CAS at PHC, Chenari and found the following:-

(A) Rameshwar Ram



- (i) Lacerated wound of the size of 2 ½” x 1/6” x bone muscle deep on left side of scalp on parietal area.
 - (ii) Lacerated wound of the size of 1 ½” x 1/8” x muscle deep on left side of scalp on fronto parietal area.
 - (iii) Lacerated wound of the size of 1/3” x 1/10” x muscle deep on left side of scalp on frontal area.
 - (iv) Swelling of the size of 2 ¾” x 2 ¼” on parietal occipital area of right side of scalp and also crossing mid line to left, with two lacerated wounds of the size of ¾” x 1/16” x fascia deep and ¾” x 1/16” x fascia deep.
 - (v) Swelling of the size of 4 ½” x 03” on upper half of right scapular area, adjoining shoulder joint with a bruise (radish)- 03” x 1 ½” and abrasion-1 ½” x 1/4”.
 - (vi) Incised wound of the size of about 1” x 1/8” x muscle deep on anteromedial side of lower half of left forearm.
 - (vii) Lacerated wound 1/3” x 1/10” x muscle deep on posterolateral side of upper half of left forearm.
- M/I (1) two black tiles (one above the other, 1 ½” apart) on anterior surface of lower half of left thigh.



Age of injuries-within 12 hours. Nature of injuries –
Opinion of nature of injury (1),(2), (3), (4) & (5) is
kept reserved till X-ray report is available. Injury (6)
and (7) are simple in nature. Injury (6) is caused by
hard and blunt substance.

(B) Bilatni Devi

(1) Swelling of about $\frac{3}{4}$ of medical area of right
dorsum hand and adjoining medial half of palm.
Tenderness is marked.

(ii) Bruise radish of the size of 4 1/2” x 01” on lateral
and anterior surface of left arm, just above elbow.

(iii) Bruise (radish) of the size of 01” x 1/2” with an
abrasion of the size of 1/8” x 1/10” on anterior
surface of lower half of left forearm.

(iv) Bruise (radish) of the size of 3/4”x1/2” with an
abrasion of the size of 1/8” x 1/10” on anterior
surface of upper half of left leg.

Age of injuries-within 12 hours.

(C) Mahendra Ram

(i) Swelling of the size of 3 1/2” x 02 with a bruise
(redish) of the size of 03” x 3/4” and an abrasion of



the size of 1 1/2" x 1/10" on right scapular area (lower half).

(ii) Bruise (skin colored) of the size of 05" x 01" on lower half of back, crossing mid line.

Age of injury-within 12 hours.

Nature of injuries-Injury (1) and (2) are simple in nature, caused by hard and blunt substance.

(D) Ram Kishore Ram

(i) Swelling of anterior side and tip of distal phalanx of left ring finger with presence of some bleeding near tip of nail bed.

Age of injury-within 12 hours.

(E) Nandu Ram

(i) Lacerated wound of size of about 1/6" x 1/10" x skin deep on front of lower half of right thumb.

(ii) Lacerated would of the size of abiout 1/6" x 1/10" x skin deep on lateral side of distal phalanx of right middle finger.

(iii) Swelling of the size of about 01" x 01" on left side of scalp, about 02" above and in line of left ear.

Age of injuries-within 12 hours.



Nature of Injuries-Injury (1), (2) and (3) are simple in nature, caused by hard and blunt substance.

11. During cross-examination, it is evident that nothing substantial has been confronted to him in order to discredit his testimony. That being so, presence of injuries over the person of respective injured is found duly substantiated. In the aforesaid background now the evidences are to be seen.

12. PW.8 is the informant who has stated that on the alleged date and time of occurrence, he was present at the place where plinth was being dug. He said that land has been measured and so, dig after leaving some place. At that very time, accused Sahdeo was armed with farsa, Dharmendra Ram, Satyendra Ram, Upendra Ram, Bihari, Dinesh, Ram Pravesch were armed with danda and lathi. Sahdeo Ram gave farsa blow over his head. Rest accused assaulted him with *lathi* and danda as a result of which, he sustained hurt over his body. Sahdeo had threatened that he will be killed. He raised alarm attracting Mahendra, Nandu, Nand Kishore, Bilatani who were also assaulted by the accused persons. Bilatani sustained fracture of her hand. Villagers came and rescued them. Then thereafter, all the injured were taken to hospital where they were treated. Identified the accused. Police came and recorded his fardbeyan (exhibited). During cross-



examination at para-4 he has stated that when he awoken at the morning, had seen the accused persons engaged in digging plinth. At that very time, he had protested. Firstly, he gone to meet nature's call. Others who were present at the Baithka, said nothing to them. When he raised *hulla* then, his family members came. He raised *hulla* from the place near to digging. He had forbidden the accused persons. Till then, it was dug in the length of 2-3 lathi (east to west) and 1 ½ hands in depth. All the accused person were engaged in digging. They have not paid heed to his words. In para-5 he has stated that further digging was forbidden when he reached at the place of occurrence. No sooner than, quarrel begin. Altercation took place amongst them for an hour. During course thereof, they were forbidding while the accused persons were insisting upon digging. The family members who came also said not to dig but, the accused persons replied in same manner. During midst thereof, quarrel started followed with *marpit*. In para-6 he has stated that Sahdeo had assaulted him. At that very time he was south to the plinth while they were north to the plinth. Sahdeo was standing adjacent to the plinth. Before inflicting farsa blow by Sahdeo, none had assaulted him. After sustaining farsa blow, he fell down. Then thereafter, no blow was repeated. Others assaulted him with *lathi*. At that very time he was conscious. Sahdeo was



standing nearby. Accused persons assaulted him with lathi after encircling him. At that very time, 40-50 villagers arrived. When villagers intervened then, thereafter, accused persons forbid to assault. In para-7 he has stated that accused persons after assault, fled away. He remained lying for half an hour. Then thereafter, he was lifted. In para-8 he has stated that he had fallen by the side of the plinth. Blood spread over the ground. He has further stated that after fleeing of accused persons others came including Nandu, Mahendra, Nand Kishore, Ghurwari. In para-9 he has stated that Bilatani, Mahendra, Nandu, Nand Kishore lifted him on cot to Darwaja and then, took him to hospital. In para-10 he has stated that police had come on the same day at about 12 noon. He had shown the P.O. Police stayed for one and half hour then, thereafter, gone. In para-11 he has stated that the land over which digging was going on belongs to Bihar Sarkar. He had given an offer that you should leave the land and he will also leave the land. Then has admitted presence of *pucca* house of the accused on the same plinth for the last so many years. Then has denied suggestion that they were not assaulted by the accused persons in a manner as alleged by them.

13. PW.9 is another injured namely, Bilatani Devi who during examination-in-chief has reiterated the prosecution



version. During cross-examination she has stated at para-5 that plinth was being dug adjacent south to her house, which was being dug from the date of occurrence itself. In para-6 she has stated that plinth was already dug about four lathi in length (east-west) and about one and half hands in depth. Then has said that when she had gone to the place of occurrence till then none of the villagers had arrived. Rameshwar had already sustained injury. Blood had oozen out. Rameshwar had not fallen after sustaining injury rather, he was standing. He was wearing kurta and lungi having soaked with blood. Later on, at about 50-60 persons assembled. In para-7 she has stated that five minutes thereafter, Rameshwar had gone to hospital. Rameshwar was taken way by the villagers. She had followed Rameshwar. In para-8 she has stated that there was no dispute with regard to the aforesaid land since before. The aforesaid land happens to be purposeful for them. Then has stated that they have concerned with the land as, their land happens to be half decimal less in an area. The plinth was being dug encroaching upon the aforesaid area belonging to them. In para-9 there happens to be contradiction to the extent that she had not stated before the police that she had sustained injury on left shoulder (back side), back, leg. Then has denied suggestion that no



occurrence took place in a manner as suggested by them and they have falsely deposed against the accused persons.

14. PW.7 Mahendra Ram is also an injured. During his examination-in-chief, he has stated that during course of digging of plinth, Rameshwar intervened whereupon accused Sahdeo gave farsa blow over his head while rest assaulted him with lathi. He along with his brother Nandu came in rescue who were assaulted by lathi. Bilatani and Rameshwar Ram came in rescue, they were also assaulted. On hue and cry villagers came and rescued them and lifted to hospital. During cross-examination at para-7 he has stated that he had seen Rameshwar lying on the ground. He had also seen Bilatani lying on the ground. Ram Kishore was not lying. Nandu was east to the plinth. About ten villagers arrived who lifted Rameshwar to the hospital. He along with Nandu, Ram Kishore, Bilatani also assisted in caring Rameshwar to his Darwaza wherefrom, he was taken to hospital on cot. In para-8 he has stated that the place where Rameshwar had fallen, the plinth was dug about 15-20 feet in length and 2 and half feet in width deep. Rameshwar fallen north to the same. He was not unconscious. In para-9 he has stated that the land belongs to Bihar Sarkar. They have got passage to ingress outgress through the same. He has further stated at para-10 that with regard to



aforesaid land dispute was going on since before. They were saying to leave the land. Also shown ignorance with regard to counter case. Then has denied the suggestion that no such kind of occurrence had taken place.

15. PW.6 is also an injured. He has stated that on the alleged date and time of occurrence, the accused persons were engaged in digging the plinth which was protested by Rameshwar Ram whereupon Sahdeo gave farsa blow over his head. Rameshwar shouted over which he along with Mahendra rushed. They were also assaulted by the accused persons. Then thereafter, Ramkishore and Bilatani came who were also assaulted. During cross-examination he has admitted at para-5 that accused persons have also instituted a case wherein he happens to be one of the accused. Then has stated that they are on strain relationship with the accused since before on account of land dispute. In para-6 he has stated that for the first time when he had seen the accused persons, till then they have dug the plinth about knee deep covering ten feet in length. In para-7, he said that when he reached near plinth 20-25 persons were present. He had identified only his grandfather out of them who was lying north to the plinth. When he reached, he was also assaulted by the accused persons. Then he lifted his grandfather. At that very time, accused were present.



When villagers came then accused persons fled away. Bilatani and Raj Kishore came. He is not remembering who came subsequently. Then they lifted their grandfather to hospital along with them. In para-9 he has stated that adjacent south to the aforesaid plinth pucca house of accused lies. At the time of occurrence, it was kattcha. After sometime, accused persons erected pucca construction over the same. At that very time they have not protested as, till then, measurement was already done. They have not instituted any case against the accused with regard to forceful construction. Then had denied the suggestion that accused persons have not indulged in any kind of criminal activities.

16. PW.5, is the another injured who, during course of examination-in-chief has reiterated the prosecution version. During cross-examination, he has stated that he was assaulted ten minutes after assault having over Rameshwar. He had seen the plinth having been dug in an area of 12-13 feet long fifteen inches width and two feet in depth. He had seen the accused persons engaged in digging plinth. The aforesaid land happens to be public road. House of accused persons lie south to that road. In para-5 he has stated that his house lies north to that land. When they reached at the place of occurrence, digging stopped. Then thereafter,



dispute arose. He had seen the accused persons engaged in digging plinth. He had seen marpit. He had seen lying over the ground. Rameshwar and Bilatani were lying three feet away from the plinth. He had seen injury over the head of Rameshwar as well as over his back shoulder. Again said over back side. Right hand, leg. He had seen fracture of hand of Bilatani Devi. Blood was coming out. In para-6 he said that he tried to lift the injured and during course thereof, he was assaulted. Then, with the help of villagers lifted the injured. He was assaulted by Dharmendra. Thereafter, he rushed towards his house and closed the door. After 5-7 minutes, he along with his wife and son came out from the house. He had also gone to hospital. In para-8 he has stated that he has got no personal interest with the land whereupon plinth was being dug but, the aforesaid land happens to be useful for the mass in general. At an earlier occasion also, there was dispute while his house was being constructed and at that very time, accused persons have forbidden them. In para-9 he has stated that accused persons have not allowed them for a year to construct the house. Then has stated that their half decimal of land is amalgamated with the aforesaid land whereupon, his elder father (uncle) had forbidden the accused to construct the house. As they were of the view that their land has been merged with the same. In para-11 he



has stated that accused persons have also filed a complaint case against them.

17. PW.4, though claimed to be one of the injured but, his presence has not been shown right from the initial stage, that means to say, from the fardbeyan. Even during trial, some of the witnesses have not shown him to be an injured during course of the occurrence. However, during course of his evidence he has supported the prosecution case and stated that he was assaulted by Sahdeo Ram with lathi. During cross-examination he has admitted that accused persons has filed a case wherein he along with his son and others are accused. In para-6 he has stated that at the time of occurrence he was present there. He has further stated that P.O. is his land. Accused began to dig plinth over his land. His half decimal land is merged therewith. Then has shown boundary of the aforesaid land. North-He himself, South-Accused Sahdeo, East-Ghurphekan and West-Mantu Rai. At para-7 there happens to be cross-examination over half decimal of land and during course thereof, he claimed that khatiyani has been recorded in his name. He has further stated that at the time of occurrence, all the accused persons were armed with spade and farsa. Accused began to dig the plinth. They have dug about sixteen feet in length east to west and 1.5-2 feet width and three feet in depth. In para-8 he has



stated that during course of digging of the plinth he had not tried to apprehend any of the accused. He had not called any body. He had simply forbidden. He had not gone near them. None of the accused came near him. When Rameshwar gone, then he was assaulted. Accused persons chased whereupon he ran towards his house while Rameshwar towards his house. In para-9 he has stated that Jitendra, Pravesh, Dinesh have chased him and then, he was assaulted at his *Darwaja*. Rameshwar fell down after sustaining injury. Then thereafter he was lifted to hospital. In para-13 he has stated that 2-4 days prior to the occurrence, the land was measured at his end by private Amin. Accused persons were also claiming the aforesaid land. At para-14 there happens to be contradiction.

18. PW.1, 2 and 3 have claimed to be eye witness out of whom PW.3 had admitted his presence in the counter case. They during course of examination-in-chief have reiterated the version of the prosecution. PW.1 in para-9 and 10 of cross-examination has stated that when he reached at the place of occurrence plinth was not being dug. It was not dug till his presence. In para-11 has stated that when he reached at the place of occurrence all the injured were lying having injuries over their person. In para-12 has stated that both the parties have fought with regard to the aforesaid land. At the time when Rameshwar had



constructed his house, accused persons put hurdle and in likewise manner, when accused persons began to construct their house, Rameshwar along with his henchmen interfered with. Rameshwar was saying that the aforesaid land happens to be under their possession.

19. PW.2 has also shown same status as disclosed under para-8, 9 and 11 of his cross-examination. PW.3, apart from being an accused in counter case has disclosed the event under para-7 as, when he reached at the place of occurrence, at that very time 10 persons were present including Dadan and Basant. They were standing silently. At that very time, Rameshwar Ram was lying having injury over his head, blood was oozing out. He had also seen wound over the person of Mahendra Ram.

20. After having minute scrutiny of the evidence available on the record, it is evident that PW.1, PW.2 and PW.3 did not stood the test and so, it looks appropriate to accept their status. Discarding them, who ever remain, happen to be own family members as well injured. Ordinarily, evidence of an injured should not be discarded as it shows presence at the place of occurrence. But, in the present nature of case, where there happens to be case and counter case, as admitted by the prosecution witness, it requires minute observation, that too when



I.O. has not been examined and, there also happens to be infirmities in the version, as they stood conflicting with regard to P.O. land. At one occasion, they have disclosed it as government land simultaneously, also claimed the land to be theirs as half decimal has merged but without any proof. Furthermore, it is also evident that at an earlier occasion when house of prosecution party was being constructed, accused persons have put hurdle and now, the accused persons were engaged in constructing their house, then the prosecution party began to create hurdle. That means to say it appears to be reciprocal activity.

21. In the aforesaid background, the prosecution would have exhibited relevant documents at their end to substantiate the claim. There happens to be complete absence at the end of the prosecution on that very score. That being so, the prosecution failed to substantiate their claim. That means to say, they have also failed to prove that the land was government land. So, the evidence of the I.O. was necessary so that, the physical status of the P.O. land would have been exposed. In its continuity, the non-examination of the I.O. is found prejudicial to the interest of the accused more particularly when column 3 of formal FIR has got interpolation / overwriting and further the fardbeyan has reached at the office of the learned CJM on 15.03.2004 in



contravention of Section 157 of the Cr.P.C. Had there been examination of the I.O. the defence would have been in a position to test the aforesaid event more particularly in the background of presence of the counter case.

22. When the aforesaid two events are interlinked, then in that circumstance, it is apparent that prosecution has suppressed the real genesis, manner of occurrence that means to say prosecution has not come up with clean hand and that being so, in spite of examination of PW.10 suggesting presence of injuries over the respective injured, will not support the version of the prosecution any more as, the prosecution in worst case, in the background of admitted partition that counter case was also pending there was claim and counter claim should have shown who was the aggressor, and in whose possession the land under dispute was. Apart from this, from the evidence of PW.4 para 13, wherein he had stated that 2-4 days prior to occurrence he had got the land measured by private Amin, ought to have placed, claimed by the accused, as well as PW.6 para-9 wherein he stated that after some days, accused persons began to construct house, which they have not protested as, land was properly measured is a circumstance which also needs duly acknowledgment coupled with own admission of the informant that the police had come to



the place of occurrence on the same day, inspected the P.O. remained therefor one and half hour and then, after leaving he gone to his Baithka, makes the prosecution version hearsay. Accordingly, the judgment of conviction and sentence recorded by the learned lower court is hereby set aside. Appeal is allowed. Appellants are on bail, hence discharged from its liability.

(Aditya Kumar Trivedi, J)

Prakash Narayan

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	04.01.2019
Transmission Date	04.01.2019

