

<i>IN THE COURT OF ADDL. SESSIONS JUDGE-II, KATIHAR</i>	
<i>Present:- Asutosh Rai, Addl. Sessions Judge-II, Katihar</i>	
<i>[Date of judgment- 01st August, 2026]</i>	
<i>[S. Trial No. 447/2010]</i>	
<i>Azamnagar P.S. case No.-93/2009 F.I.R. u/s 147, 148, 448, 323, 324, 307, 379, 504 of the I.P.C.</i>	
<i>Complainant/ Informant</i>	<i>State of Bihar through informant namely Madan Yadav, S/O- Late Raghu Yadav, R/O-Vill- Azamnagar P.S.-Azamnagar, Distt.-Katihar</i>
<i>Represented By</i>	<i>Sri Md. Ezaj Alam Ld. A.P.P.</i>
<i>Accused</i>	<i>1. Satyanarayan Yadav @ Satan Yadav, S/o- Late Raghu Yadav, aged about 68 years, 2. Pappu Kumar Yadav , S/o- Satyanarayan Yadav, aged about 46 years, 3. Chunchun Yadav, S/o- Satyanarayan Yadav, aged about 36 years, 4. Pinki Kumari, D/o- Satyanarayan Yadav, aged about 35 years & 5. Kanchan Yadav, D/o- Satyanarayan Yadav, aged about 36 years, All are R/o- Azamnagar, P.S.-Azamnagar, Distt.-Katihar</i>
<i>Represented By</i>	<i>For defense : Sri Bibhas Chandra Pathak, ld. Advocate</i>

<i>Date of Offence</i>	<i>13.07.2009</i>
<i>Date of F.I.R.</i>	<i>13.07.2009</i>
<i>Date of Charge-sheet</i>	<i>31.07.2009</i>
<i>Date of Framing of Charge</i>	<i>21.12.2010</i>
<i>Date of Commencement of evidence</i>	<i>07.01.2011</i>
<i>Date of which judgment is reserved</i>	<i>21.07.2026</i>
<i>Date of Judgment</i>	<i>01.08.2026</i>

<i>Date of conviction/ probation Order, if any</i>	<i>01-08-2026</i>
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Accused Details

<i>Ran k</i>	<i>Name of Accused</i>	<i>Date of Arrest/ Surrender</i>	<i>Date of Release on Bail</i>	<i>Offences Charged with</i>	<i>Whethe r Acquitt ed or Convic ted</i>	<i>Senten ce Impos ed</i>	<i>Period of Detention Undergone during Trial for purpose of section 428 of Cr.P.C.</i>
<i>01</i>	<i>Satyanara yan Yadav @ Satan Yadav</i>	<i>14.7.2009</i>	<i>09.09.20 09</i>	<i>Charges u/s- 147, 148, 323, 504, 324/149, 325/34, 452, 307/149 of the I.P.C.</i>	<i>Acquitt ed</i>	<i>N/A</i>	<i>N/A</i>
<i>02</i>	<i>Pappu Kumar Yadav</i>	<i>25.07.200 9</i>	<i>25.07.20 09</i>	<i>DO</i>	<i>DO</i>	<i>DO</i>	<i>DO</i>
<i>03</i>	<i>Chunchun Yadav</i>	<i>25.07.200 9</i>	<i>25.07.20 09</i>	<i>DO</i>	<i>DO</i>	<i>DO</i>	<i>DO</i>
<i>04</i>	<i>Pinki Kumari</i>	<i>25.07.200 9</i>	<i>25.07.20 09</i>	<i>DO</i>	<i>DO</i>	<i>DO</i>	<i>DO</i>
<i>05</i>	<i>Kanchan Yadav</i>	<i>25.07.200 9</i>	<i>25.07.20 09</i>	<i>DO</i>	<i>DO</i>	<i>DO</i>	<i>DO</i>

JUDGMENT

1. The accused persons namely Satyanarayan Yadav @ Satan Yadav, Pappu Kumar Yadav , Chunchun Yadav, Pinki Kumari and Kanchan Yadav and stand charged for the offenses punishable U/S- 147, 148, 323, 504, 324/149, 325/34, 452, 307/149 of the I.P.C. as leveled against them.

CASE OF PROSECUTION/BRIEF FACTS

2. As per written report of informant namely Madan Yadav prosecution case in brief is that aforesaid informant lodged a written report before S.H.O. Azamnagar alleging therein that on dated 13.07.2009 at about

04:00 O'clock on the point of Partition accused namely Satan Yadav, Kalo Devi, Kanchan Kumar Yadav, Chunchun Kumar Yadav and Pinki Kumari having used filthy words entered into house and courtyard and attacked with lathi, spear, Bansh ka Morha and iron rod and having thrown down to his son Bablu Yadav and his wife Dhuniya Devi and him started beating them. Informant has further alleged that with view to caused murder they also started inflicting spear upon him and in that course same hit at below of his eyes and blood oozed out and they also caused injury at the three different parts of left hand due to which blood oozed out. Informant has further alleged that due to which spear got penetrated in him and with view to caused murder Satan Yadav and Pinki Devi started pressing his neck and Pappu Kumar Yadav beaten him by the means of Bansh ka Morha due to which he sustained injury on his body and leg. Informant has further alleged that after assaulting they took away ornaments and some cash kept in the box. After that any how saved his life and went to police station and after that he got unconscious.

INSTITUTION OF CASE/ INVESTIGATION/ INQUIRY

3. On the basis of written report of informant namely Madan Yadav formal F.I.R. bearing Azamnagar P.S. case No. 93/2009 F.I.R. u/s 147, 148, 448, 323, 324, 307, 379, 504 of the I.P.C. was instituted against the accused namely Satyanarayan Yadav @ Satan Yadav, Kalo Devi, Pappu Kumar Yadav, Kanchan Kumar Yadav, Chunchun Kumar Yadav and Pinki Kumari and after investigation police submitted charge-sheet no. 154/2009 u/s 147, 148, 149, 448, 341, 323, 324, 325, 307, 504 of the I.P.C. against aforesaid all accused persons.

4. On receipt of charge-sheet Ld. Court, Katihar took cognizance of the offence U/S- 147, 148, 149, 448, 341, 323, 324, 325, 307, 504 of the I.P.C. of the against the all charge-sheeted accused persons namely Satyanarayan Yadav @ Satan Yadav, Kalo Devi, Pappu Kumar Yadav, Kanchan Kumar Yadav, Chunchun Kumar Yadav and Pinki Kumari and having seen that the section 307 of the I.P.C. as leveled against the aforesaid accused persons is exclusively triable by the

court of sessions, Id. Court. supplied the Xe-rox copy of police papers as per requirement of section 207 of the Cr.P.C. to the ld. advocate of aforesaid accused persons and ld. court committed the case record to the court of Sessions for further trial. Later on, as per order of the District and Sessions Judge, Katihar case record came to the file of my court for further trial and disposal.

CHARGES AGAINST ACCUSED PERSONS

5. *Later on, after completion of the appearance of the aforesaid accused persons namely Satyanarayan Yadav @ Satan Yadav, Pappu Kumar Yadav , Chunchun Yadav, Pinki Kumari, Kalo Devi and Kanchan Yadav before the court and after considering the materials available on record and on hearing the ld. A.P.P. for State as well as ld. counsel for the aforesaid both accused persons, my ld. Predecessor court framed the charges u/s- 147, 148, 323, 504, 324/149, 325/34, 452, 307/149 of the I.P.C. in written against the aforesaid aforesaid accused persons and the contents of the same were read over and explained to the aforesaid accused persons in hindi to which they denied and pleaded to be not guilty and claimed to be tried. Hence the trial.*

PROSECUTION EVIDENCE

6. *In order to substantiate its case prosecution side has examined altogether eight (08) witnesses in the support of its case. They are:-*

<i>Sr. No.</i>	<i>Pws. Number</i>	<i>Description</i>
01	PW-01- Bablu Kumar Yadav	Victim to this case.
02	PW-02- Md. Iftekhar @ Intkhab	Eye witness
03	PW-03- Laxman Yadav	Eye Witness
04	PW-04- Jaggi Yadav	Hearsay Witness
05	PW-05- Dhanilal Yadav	Hostile Witness
06	PW-06- Jhuniya Devi @ Dhuniya	Victim to this case
07	PW-07- Madan Yadav	Informant to this case
08	PW-08- Raj Kumar Keshari	Hostile Witness

7. *Prosecution side has not adduced any documentary evidences on the record.*

<i>Sr. No.</i>	<i>Exhibit No.</i>	<i>Description</i>
01	N/A	N/A

8. It would be pertinent to mention here that during the pendency of trial one accused namely Kalo Devi died due to which by its order dated 19.01.2024 dropped the proceeding against said accused.

STATEMENT OF ACCUSED PERSONS

9. After conclusion of the prosecution evidence, the statement of the accused person namely Satyanarayan Yadav @ Satan Yadav, Pappu Kumar Yadav, Chunchun Yadav, Pinki Kumari and Kanchan Yadav were recorded under section 313 of the Cr.P.C. and all incriminating facts were put to them but they denied veracity of prosecution evidences with the contentions that they are innocent and have falsely been implicated in this case.

10. While accused persons neither examined any witnesses nor adduced any documentary evidence on record.

11. Now, the point for consideration is whether the prosecution has been able to prove the charges as leveled against the accused persons, beyond the shadow of all reasonable doubts ?

FINDINGS

12. From perusal of the case record it is evident that in order to substantiate its case prosecution has examined altogether 08 witnesses, out of them P.W.-07 Madan Yadav who is the informant and victim to this case has stated in his examination-in-chief that that he is the informant to this case. The incident took place four years ago. It was the time of 3:00 O'clock of the day. After having meal, he was taking rest at the home. P.W.-07 has further stated that his elder brother Satyanarayan Yadav, and his nephews Pappu Kumar Yadav, Kanchan Yadav, Chunchun Yadav, Pinki Kumari, and Kala Devi (Bhabhi) entered in his house and started beating and told that it is my house. The accused had lathis, Samat (blunt sticks) and Gupti. Gupti's lathi was in the hand of Satyanarayan Yadav. The Samat was in the hand of Pappu Kumar Yadav and Lathi was in the hand of Chunchun Yadav and Kanchan Yadav also had a lathi. Pinki Kumari and Kala Devi had lathis. When they started beating him, the family members started rescuing him, then they also

sustained injuries from lathi and fists. He was first hit by a lathi on his left hand and hand got fractured. He also sustained injury on the left hand by the Gupti's lathi. His eye was being taken about by throwing him down, Injury got occurred. his family members saved him. He sustained injuries on his legs, hands, and body. On the noise of the assaulting, the villagers came. They saw it,. Having fled away he went at the police-station. He got unconscious. He was taken to the hospital. When he regained consciousness, he had got a application written and same was read out to him and having found it to be correct he affixed his thumb impression on it. He had given a statement to the police. P.W.-07 has further stated that his house is on his father's land, and on that same land his house and the accused brother's house are situated. P.W.-07 has further recognized to the accused namely Satyanarayan Yadav who was present before court and P.W.-07 has further claimed to identify the rest upon after seeing them.

During his cross-examination, P.W.-07 has stated that the boundary of the place of occurrence is his courtyard of his house. Courtyard has not been completely fenced. In the east of the place of occurrence, court yard has not been fenced.. To the north there is the houses of both the brothers (the parties). To the south- there is open field, to the east there is Jugal Kesari's house, and to the west there is the house of Jugal Kesari. In the eastern there is the field of Amarnath Kesari. P.W.-07 has further stated that he remained unconscious in the hospital for one day and stayed in the hospital for two months. He denied that he was not unconscious after being beaten. P.W.-07 has further stated that there was a previous dispute between the two brothers regarding the partition of land. The land is in the name of Babu ji (his father). His father is not alive. Total 02-04 and 10 lathi was inflicted. There was the injury of the Lathi, Spear and Samat (Musal). P.W.-07 has further stated that he could not tell who hit lathi upon him and which part of the body. The first lathi blow was on his left hand struck by Satyanarayan Yadav. The second lathi blow was struck on his right leg by Satyanarayan's son and daughter... His leg was not injured. He could not tell who struck the fourth lathi blow on the thumb of his left hand. The assault was going on

with lathis inside the house and also in the courtyard. P.W.-07 has further denied the the suggestion that a false case had been filed with the intention of grabbing land, and he has further stated that it is not so that no such incident as described had taken place.

13. P.W.-01 Bablu Kumar Yadav who is the victim to this case has stated in his examination-in-chief that this incident is about two years old. It was the time of 4:00 O'clock of evening. At that time, he was at his house. His cousin brother Laxaman Yadav came to his house. His parents were talking to him about land. His younger brothers and sisters were also at home. At that very time, Satan Yadav, Pappu, Pinki, Chunchun, Kanchan and Kalo Devi came there having laced with lathis, a spear, Musal (pestle used for pounding) and knife, and started abusing all of them. Pinki caught hold of his mother. When he went to rescue her, all the accused persons started beating him with lathis and danda. The accused also beaten his father and fractured his left hand. Satan Yadav gave a blow of spear upon his father which hit near his right eye. His father's thumb was also got fractured. On the noise many people came and rescued them. After that, they went to the police station. The police recorded his father's statement. Thereafter, the police took them to the hospital, where they were examined and treated. Altercation and assaulting took place on the point of land.. The police had recorded his statement. P.W.-01 has further recognized to the accused namely Sattan Yadav who was present before court and has further claimed to identify to the other accused persons after seeing them.

During his cross-examination, P.W.-01 has stated that the date of the incident is 13.07.2009. His father and his cousin brother Laxman had gone to the police station. His father had given his statement and the police had written it down. P.W.-01 has further stated that prior to this incident, Satyanarayan Yadav had also filed a case bearing No. 1313/08, which is pending in the court of Shri M. Alam, the then S.D.J.M., Katihar. P.W.-01 has further stated that in the West of the place of occurrence there is the house of Amarnath Keshari, South-place of Maharaj, West-His own Gohal and North-House of Jaggi Yadav. P.W.-

01 has further stated that Pappu Kumar Yadav assaulted him on his head, right hand and left thigh by the means of Samat (Musal/ Pestle). He assaulted on two to three place of his head and two to three place of hand. There was swelling on the head and hand. Assault was committed at two places of the thigh. Pinki had caught hold him. All were assaulting him by hither and thither.. He had sustained injury on his head, and and thigh.

14. P.W.-06 Jhuniya Devi @ Dhuniya Devi who is the victim to this case has stated in her examination-in-chief that the incident was more than four years old. She has further stated that it was the time of 04: O'clock of the day. She was at home. She has further stated that Satyanarayan Yadav, Pappu Kumar Yadav , Pinki Devi, Kajal Devi, Chunchun Kumar, and Kanchan Kumar had beaten her daughter, and had also beaten her husband and herself. She went to save them. She was also beaten. Satyanarayan Yadav and Pappu Kumar Yadav beaten her husband and got his both hands fracture. Kala Devi and Pinki Kumari beaten her. They hit her husband below both his eyes, due to which injury got occurred inward. She was hit on her head, back, and arms. Her daughter was hit on the body. Her son, Bablu Kumar, received injuries on his head and body. There was knife and Samat (Musal/ pestle) in the hand of accused persons. There were lathi and Bamboo Phatta in the hand of Chunchun Yadav and Kanchan Yadav. P.W.-06 has further claimed to identify all accused persons.

During her cross-examination, P.W.-06 has stated that boundary of the place of occurrence is as follows:-North-her own house-and the house of Satyanarayan and other four houses, South-Vacant land of her as well accused persons. East-Vacant land of her as well as accused persons. West-Vacant land of both parties.. P.W.-06 has further stated that the beating took place inside her house. While beating him, they dragged her out to the door. She saw them by committing assaulting.. Satyanarayan Yadav had stabbed her husband below both his eyes with a knife. The length of knife was of just like one hand. Knife was of iron. The knife had been thrust into hand . The beating was happening in a fit of

rage. The knife had penetrated to the depth of one finger. She has not given any testimony anywhere before today. In the year 2008, the accused Satyanarayan had filed a case against her, in which her husband, she herself, and her son are the accused. That case is G.R. No. 13-03-2008 and is pending. It is pending before the Sri M. Alam, Judicial Magistrate.

15. *P.W.-02 Md. Iftekhar @ Intekhab who is independent witness has stated in his examination-in-chief that this incident took place three years ago at about 04:00 o'clock in the evening. At that time, he was returning home from the Block Azamnagar, where M.L.C. elections were being held that day. On the way, when he reached in front of the accused's house, he saw that the accused and the informant, who belong to the same house, were quarreling inside and, while quarreling, came out of the house and a fight started between the two. One person among them, after being beaten, fell into the water which was just adjacent to ddor. He called the A.S.I. who was standing at a distance of 50 feet, and he came there. He told him to look into this matter himself and after that from where he had left. P.W.-02 has further stated that Madan Yadav is present in the court and, having been beaten, he had fallen into water. P.W.-02 has further identified the accused namely Satyanarayan Yadav @ Sattan Yadav, who was present before court, and has further stated that this person was assaulting to the informant and one another girl, and other persons were also involved in the assault. P.W.-02 has further claimed that he may identify the other accused persons after seeing them. P.W.-02 has further stated that the informant sustained an injury at his temporal region.*

During his cross-examination, P.W.-02 has stated that the accused and the informant are full brothers to each other. He does not know the reason for this incident. P.W.-02 has further stated that at the time of the incident, all the accused were laced with lathis and danda. The accused had only lathis and danda in their hands, and they had no other weapons. At that time, lathis were in the hands of both parties, but the informant Madan Yadav was hit by a lathi first and he fell down after being hit. He did not see blood flowing from the informant Madan

Yadav's temple. He did not lift him up and make him sit. His house is 06 K.M. far away from the place of occurrence. Before the incident, he did not know anyone from either party.

16. *P.W.-03 Laxman Yadav has stated in his examination-in-chief that the informant of this case, Madan Yadav, and the accused Satyanarayan Yadav both are his maternal uncles. On the day and time of the incident, he was in Azamnagar Bazar. He was returning from the bazar to his maternal uncle's house. When he came to his maternal uncle's house, he saw that the incident of assault had already taken place. His maternal uncle Madan Yadav had injuries near his left eye and near the elbow of his left hand. The injury on the hand was penetrating through and through. He could not say with what object said injury had been caused. After that his maternal uncle Madan Yadav went to police-station. He and others also went along. Later, Satyanarayan Yadav also arrived at the police station. Babalu Yadav and Devi also had swollen injuries on their bodies. The police sent his maternal uncle to the hospital. They took him to the hospital, where he was treated. The police came to the house after the incident and inquired from him about the incident. He told the police whatever he had seen.*

It would be pertinent to mention here that on the request of the prosecution, P.W.-03 was declared hostile; after that, the prosecution cross-examined to the the aforesaid witness, but he denied all the suggestions given by the prosecution side.

Further, during his cross-examination done on behalf of the defence side, P.W.-03 has stated that he does not know as to who caused the injuries to his maternal uncle Madan Yadav, as well as to his maternal aunt and to Bablu Yadav.

17. *P.W.-04 Jaggi Yadav has stated in his examination-in-chief that this incident is about 5 years ago at 12 O'clock of noon. He had gone to Bahiyar (the open area of the village) to take back the cattle. When he returned home from Bahiyar, he heard that there had been an assault between Sattan and Madan. Madan. Madan was injured and was*

admitted to the hospital. Hearing this, he went to the hospital with Madan's son and, after seeing Madan admitted in the hospital, he returned home. P.W.-04 has further recognized to the accused namely Sattan Yadav, who was present before the court, and has further claimed that he would identify the other accused persons after seeing them.

During the cross-examination by the defence, P.W.-04 has stated that Madan and Sattan are full brothers and a land dispute is going on between the two. He did not say on which part of the body Madan had sustained injury. He has no personal knowledge about this incident.

18. *P.W.-05 Dahnial Yadav has stated in his examination-in-chief that that the incident is four years old. He stated that Santan and Madan had fought with each other. He had gone to the hospital and saw Madan, who was undergoing treatment. He saw injuries on his body and that a bandage was tied. P.W.-05 has further recognized to the accuse namely Satan Yadav, who was present in court that day, and stated that he also knew all the other accused persons..*

During his cross-examination P.W.-05 has stated that he had not seen the incident with his own eyes. He stated that the accused are his cousin brothers that's why he identifies them.

19. *P.W.-08 Raj Kumar Keshari has stated in his examination-in-chief that that he does not know any thing about the incident. His statement was not recorded by the police .*

It would be pertinent to mention here that on the request of the prosecution, P.W.-08 was declared to be hostile. After that the prosecution cross-examined to the the aforesaid witness, but he denied all the suggestions given by the prosecution side. P.W.-08 has further stated that it is not so that having gone into favour of the accused persons he has concealed the true facts

Further, during his cross-examination done on behalf of the defence side, P.W.-08 has stated that today, he has testified voluntarily. The house of the accused person is next to his house that's why he identifies them.

20. *While at the time of argument, learned A.P.P. appearing for the state has submitted before this court that prosecution witnesses, including informant and other victims to this case, have fully supported the case of the prosecution and they have also given constant and reliable testimonies on the point of time and date of occurrence, place of occurrence, nature and manner of occurrence as alleged in the written report. Ld. A.P.P. has further submitted that the injured are the best persons to depose about the incident and there is no reason to disbelieve their testimony. Even if no other independent witness has been examined that ipso facto is no ground to ignore the testimony of the injured. He has further submitted that all the prosecution witnesses have given the constant testimonies on the point of assaulting by the accused persons and some minor discrepancies are natural because the all prosecution witnesses have been examined after long gaps of the alleged occurrence. So the aforesaid accused persons may be held guilty for committing offenses u/s 147, 148, 323, 504, 324/149, 325/34, 452, 307/149 of the I.P.C. as leveled against them.*

21. *Per contra ld. Counsel for the defense has submitted as follows:-*

(i) Any reliance can not be placed upon the oral testimonies of the prosecution witnesses namely P.W.-07, P.W.-06 and P.W.-01 who are much interested witnesses of this case because they are either victims or informant to this case. While P.W.-3, P.W.-4 and P.W.-5 are not eye witnesses and P.W.-2 and P.W.-8 are hostile witnesses. Further no material on record to show that alleged weapons were used in this alleged occurrence or not?

(ii) Ld. counsel has further contended that th prosecution did not examine the I.O. of this case and non examination of I.O. to this case has caused much prejudice to the defense because the prosecution witnesses have given much contradictory oral testimonies on the point of place of occurrence.

(iii) Ld. counsel has further submitted that th prosecution neither examined the concerned medical officer who examined the injured

persons of this case nor got the injury reports exhibited before this court.

Further, X-ray report and X-ray plate were not brought before court, so nature of injury can not definitely determined. Further, there is no explanation on the behalf of the prosecution that as to why medical officer was not examined before this court. So due to non examination of concerned medical officer much prejudice has been caused to the defense side.

(iv) Ld. Counsel has further submitted that moreover, there are much inconsistencies and discrepancies in the oral evidences of prosecution witnesses even on the vital point of the manner, nature and place of occurrence of this alleged occurrence. So the oral testimonies of the aforesaid witnesses are not reliable at all.

(v) Learned counsel for the defense has further submitted that there is no repetition of lethal blow on the body of any victims to this case so it is evident that there is no intention on the part of the accused, if accused persons had the intention to cause murder to the informant or other victims to this case they must have given repeatedly lethal blow of the body of the victims to this, as there was no intervening circumstances to prevent them. So, any point of view accused persons can not be held guilty for the offense punishable under section 307/149 of the I.P.C.

(vi) The ld. counsel has further submitted that so far as charge u/s 452 is concern it is notable that prosecution has not adduced any title document or any document to show informant's possession over the land in question. Further it is admitted fact that alleged fighting took place in the courtyard of the house which belongs to the both parties. Further there is no material on the record to prove the charge u/s 504 of the I.P.C as leveled against accused persons. Further in the want of injuries report of victims to this case as well as due to non examination of the concerned medical officer much prejudice has been caused to the defense side because defense has been deprived from cross-examination of the

medical officer on the nature of injuries allegedly sustained by the victims to this case.

(vii) Ld. counsel has further submitted that alleged assaulting took place in the court yard or just near the house so the presence of accused namely Kanchan Yadav, Chunchun Yadav at the place of occurrence is quite natural. Further there is no specific allegation against the both accused persons except to participation in this alleged occurrence. While some material witnesses of the prosecution has never taken the name of Kanchan Yadav and Chunchun Yadav. Further P.W.-01 has stated that Pinki caught hold his mother. But P.W.-06 who is the mother of P.W.-01 has never stated that Pinki Devi caught her. Further P.W.-01 has never stated that his mother was assaulted by Pinki Devi and Kalo Devi. Further P.W.-07 who is the informant to this case has also never specifically stated that Pinki Devi and Kalo Devi beaten to her wife (P.W.-06 Jhuniya Devi @ Dhuniya Devi) Further from record it is evident that Dhuniya Devi and Bablu Yadav were never treated by the doctor. So, it is very doubtful that they were assaulted by the accused persons. In last he has submitted that except for examining the injured there is no other independent witness. Although, it is clear from written report that alleged occurrence took place at 4:00 O'clock in evening and it has come on record that there were many other co-villagers available but none were examined. It was further submitted that the concerned doctor who examined the injured has not been produced. Even the X-Ray plate or X-ray report was produced before court on record. It has been further submitted that there are material discrepancies in the deposition of the prosecution witnesses and such no reliance can be placed on the deposition of the prosecution witnesses. Further there is admitted fact that there is land dispute among the both parties and due to land dispute the accused persons have been falsely implicated in this case. So the accused person be acquitted from this instant case. Accordingly. It has been submitted that accused persons are entitled to get the benefits of doubts with respect of the all charges u/s 147, 148, 323, 504, 324/149, 325/34, 452, 307/149 of the I.P.C. as leveled against them and

accordingly they are entitled for acquittal from the all charges as leveled against them.

22. *Heard the both parties at length and perused the entire case record as well as the evidences available on the record. Now the court will analysis the evidences brought on the record by the prosecution and the contention of the both parties. The prosecution has relied upon the oral testimonies of the eye witnesses. Court would first of all, like to deal with respect to charges u/s 452 of the I.P.C. as leveled against the accused persons. Section 452 of the I.P.C. provides as "Whoever commits house-trespass after preparation for hurt, assault or wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine." So it may be easily hold that house-trespass means entering into someone's house without permission of owner of the house or staying on someone's property after being asked to leave by the owner of the house. Now, question before this court as to whether prosecution has succeeded to prove the charges U/S 452 of the I.P.C as leveled against the aforesaid accused persons. From the perusal of the written report available on the record it is evident that informant to this case namely Madan Yadav has stated that accused persons entered into his house and courtyard and attacked with lathi, spear, Bansh ka Morha and iron rod. Further P.W.-7 Madan Yadav has stated in his examination-in-chief that the accused persons entered in his house and started beating. But during cross-examination, P.W.-7 has stated that the boundary of the place of occurrence is his courtyard of his house. Courtyard has not been completely fenced. In the east of the place of occurrence, courtyard has not been fenced. To the north there is the houses of both the brothers (the parties). Further P.W.-1 Bablu Kumar Yadav has stated that all the accused persons came there and started abusing all of them. Pinki caught hold of his mother. When he went to rescue her, all the accused persons started beating him with lathis and danda. But P.W.-1 has not specifically stated as to whether alleged assaulting took place inside the house or outside the house. Further P.W.-6 Jhuniya Devi has stated that the beating took place inside her house. While beating her, they dragged*

her out to the door. She saw them by committing assaulting. During her cross-examination, P.W.-6 has stated that boundary of the place of occurrence is as follows:-North-her own house and the house of Satyanarayan and other four houses, South-Vacant land of her as well as accused persons. East-Vacant land of her as well as accused persons. West-Vacant land of both parties. So, it is evident that prosecution witnesses have not given the constant testimonies on the point of criminal house-trespass. Further from perusal of record it prima facie appears that the house of both the parties have not been completely fenced to each other rather houses of the both parties are situated on the same land. Furthermore there is no documentary evidence on record to show that the informant was in exclusive possession of the house where the alleged incident took place. So having consideration the all facts of this case this court findd and holds that prosecution has not succeeded to prove the charge U/S 452 of the I.P.C beyond the all shadows of reasonable doubts against the accused persons namely Satyanarayan Yadav @ Satan Yadav, Pappu Kumar Yadav , Chunchun Yadav, Pinki Kumari and Kanchan Yadav. So, by giving the benefits of doubts aforesaid accused persons are hereby acquitted from the charge u/s 452 of the I.P.C as leveled against them.

23. *Now., next question before this court as to whether prosecution has succeeded to prove the charge u/s 504 of the I.P.C as leveled against the accused persons. No doubts that “provision of the sec. 504 are attracted only when the accused persons firstly insults the victim or victims secondly the insult must be of such a nature that it may cause provocation to the victims and thirdly that was accused intended or knew that the provocation was likely to cause the victims to either break public peace or offense other. While from perusal of the written report it is evident that informant has stated that accused persons having used filthy words entered into house and courtyard. But what actual words was used by the accused persons has not been made clear in the written report. Further P.W.-7 Madan Yadav has stated in his examination in chief that accused persons entered in his house and started beating and told that it*

is my house. But he has not made clear that what all actual words were used by the accused persons. Further P.W.-01 and P.W.-06 have not stated any thing as to whether accused persons abused to the informant and to them or not? Further other witnesses namely P.W.-02, P.W.-03, P.W.-04 and P.W.-08 have also nothing stated regarding the said allegation. So from the perusal of the record it is evident that all prosecution witness have not given reliable oral testimonies as to what actual words were used by accused persons. While in the case of Jodha Singh V. State of U.P. 1991 Cri. .L J. 3226 Hon'ble High court of Allahabad has opined that "provision of the sec. 504 are attracted only when the accused persons firstly insults the complainant secondly the insult must be of such a nature that it should be provocation to the complainant and thirdly that was accused intended or knew that the provocation was likely to cause the complainant to either break public peace or offense other. Further in a complaint U/S 504 I.P.C the complainant must mention the actual word which were used by the accused insulting him/her". But from the perusal of the written report it is evident that informant has not made clear as to what actual words were used by the accused persons. Further other material witnesses have also not made clear as to whether accused used filthy words or not. Further prosecution has not made clear as to whether accused persons intended or knew that the provocation was likely to cause the informant or other victims to this case to either break public peace or other offence or not. So from discussion as made above it is clear that prosecution has not succeeded to prove the charge u/s 504 of the I.P.C. as leveled against the accused persons. So having consideration the all facts of this case this court finds and holds that prosecution has not succeeded to prove the charge u/s 504 of the I.P.C beyond the all shadows of reasonable doubts as leveled against the accused persons namely Satyanarayan Yadav @ Satan Yadav, Pappu Kumar Yadav , Chunchun Yadav, Pinki Kumari and Kanchan Yadav. So, by granting the benefits of doubts aforesaid accused persons are acquitted from the charge u/s 504 of the I.P.C as leveled against them.

24. Now the next question before this court as to whether prosecution has succeeded to prove the charge U/S 307/149 of the I.P.C. as leveled against the accused persons. In order to reach on the right conclusion, it would be expedient to refer section 307 of the I.P.C. which provides as :-

“Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to 1[imprisonment for life], or to such punishment as is herein before mentioned. Attempts by life convicts.—

2[When any person offending under this section is under sentence of 1[imprisonment for life], he may, if hurt is caused, be punished with death.] So from the bare perusal of the provision of section 307 of the I.P.C. it is evident that the main ingredients under section 307 I.P.C are (i) the act attempted should be of such a nature that if not prevented or intercepted it would lead to the death of the victim as observed in Indian Penal Code by Ratanlal and Dheerajlal, (ii) the intention or mens rea to kill needs to be proved without doubt. No doubt that for conviction u/s 307 of the I.P.C. to any accused much importance has been given to ‘mens rea’ or the “intention” than the actual act committed by the accused person or persons. No doubt that intention or mens rea may be tested of the accused from the nature of the weapon used in the alleged occurrence, the manner in which the weapon was used. From the motive of alleged crime, severity of the blow and from the part of the body where the injury was caused are to be taken into consideration and after that it is determined the mens rea or intention of the accused. Persons. So, it has to be seen whether the prosecution has succeeded to establish the essential facts to constitute the offense u/s 307/149 of the I.P.C. in the present case and whether the prosecution has established that accused committed the offense that too with an intention to kill to the informant and other victims to this case beyond all the shadows of reasonable doubt or not.

25. While from perusal of the case record it is evident that in his written report informant to this case namely Madan Yadav has stated that with view to caused murder, accused persons started inflicting spear upon him and in that course same hit below of his eyes and blood oozed out and they also caused injury at the three different parts of left hand due to which blood oozed out. Informant has further alleged that due to which spear got penetrated in him and with view to caused murder Satan Yadav and Pinki Devi started pressing his neck and Pappu Kumar Yadav beaten him by the means of Bansh ka Morha due to which he sustained injury on his body and leg. But when he appeared before court as P.W.-7 then Madan Yadav deposed before court that his elder brother Satyanarayan Yadav, and his nephews Pappu Kumar Yadav , Kanchan Yadav, Chunchun Yadav, Pinki Kumari, and Kala Devi (Bhabhi) entered in his house and started beating and told that it is my house. The accused had lathis, Samat (blunt sticks) and Gupti-lathi was in the hand of Styanarayan Yadav. The Samat (Musal/ pestle) was in the hand of Pappu Kumar Yadav and Lathi was in the hand of Chunchun Yadav and Kanchan Yadav also had a lathi. Pinki Kumari and Kala Devi had lathis. When they started beating him, the family members started rescuing him, then they also sustained injuries from lathi and fists. He was first hit by a lathi on his left hand and hand got fractured. He also sustained injury on the left hand by the Gupthi's lathi. His eye was being taken out by throwing him down, Injury got occurred. his family members saved him. He sustained injuries on his legs, hands, and body. On the noise of the assaulting, the villagers came. They saw it, Hence from the oral testimonies of the P.W.-07 it is quite clear that he has never deposed before this court that accused persons assaulted him or other victims to this case with view to cause murder. Further allegedly other victims to this case namely P.W.-01 Bablu Kumar Yadav has deposed before this court inter alia that tt that time of incident, he was at his house. His cousin brother Laxaman Yadav came to his house. His parents were talking to him about land. His younger brothers and sisters were also at home. At that very time, Sattan Yadav, Pappu, Pinki, Chunchun, Kanchan and Kalo Devi came there having laced with lathis, a spear, Musal

(pestle used for pounding) and knife, and started abusing all of them. Pinki caught hold of his mother. When he went to rescue her, all the accused persons started beating him with lathis and danda. The accused also beaten his father and fractured his left hand. Santan Yadav gave a blow of spear upon his father which hit near his right eye. His father's thumb was also got fractured. On the noise many people came and rescued them. Further in his cross-examination, P.W.-1 has stated that Pappu Kumar Yadav assaulted him on his head, right hand and left thigh by the means of Samat (Musal/ Pestle). He assaulted on two to three place of his head and two to three place of hand. There was swelling on the head and hand. Assault was committed at two places of the thigh. Pinki had caught hold him. All were assaulting him by hither and thither. He had sustained injury on his head, and and thigh. But P.W.-01 has aslo never stated that accused persons committed alleged assaulting with view to take the life away of the victims to this case. Further P.W.-6 Jhuniya Devi @ Dhuniya Devi who is allegedly another victim to this case has deposed before this court inter alia that Satyanarayan Yadav, Pappu Kumar Yadav , Pinki Devi, Kajal Devi, Chunchun Kumar, and Kanchan Kumar had beaten her daughter, and had also beaten her husband and herself. She went to save them. She was also beaten. Satyanarayan Yadav and Pappu Kumar Yadav beaten her husband and got his both hands fractured. Kala Devi and Pinki Kumari beaten her. They hit her husband below both his eyes, due to which injury got occurred inward. She was hit on her head, back, and arms. Her daughter was hit on the body. Her son, Bablu Kumar, received injuries on his head and body. There was knife and Samat (Musal/ pestle) in the hand of accused persons. There were lathi and Bamboo Phatta in the hand of Chunchun Yadav and Kanchan Yadav. Further in her cross-examination, P.W.-6 has stated that Satyanarayan Yadav had stabbed her husband below both his eyes with a knife. While P.W.-07 has stated that accused gave a blow of spear. So, it is evident that on the point of nature of the weapon both witnesses have given contradictory oral testimonies to each other. But P.W.-06 has also never stated that alleged assaulting was done with view to cause murder. So it is evident that prosecution witnesses

have never given constant and reliable oral testimonies on this point that accused persons committed alleged assaulting with view to take the life away of the victims to this case. Further P.W.-02, P.W.-03, P.W.-04 and P.W.-08 have also not stated specifically that accused persons caused injuries to the informant or others victims to this case with intention to take theirs life away or to kill them. Further, prosecution neither examined the concerned medical officer before this court nor got the injuries reports exhibited on record. So there is nothing on the record to show that accused persons committed alleged assaulting to the victims to this case with intention to take theirs life away. Further prosecution has miserably failed to establish mens rea or the intention of the accused persons to kill to the victims to this case, which is the sine qua non for attracting the ingredients of section 307 of the I.P.C. Though at the same place it would be pertinent to mention here that it is no doubt true that the nature of the injury is not always used to ascertain the intention of the accused persons. Because, serious injury may be caused without intention to cause murder. While simple injury may be caused with the intention of causing murder and by thus simple injury will be enough to convict the person under section 307 of the I.P.C. However, in the present case, Prosecution has failed to prove that accused persons were imbued with intention to cause murder. Further. Prosecution has not made clear as to what was the intervening circumstances, which prevented to the accused persons to achieve theirs ultimate goal. So by coming on the contention of the ld. Counsel for the defense coupled with facts of this case, court finds that there is much force in the submission of ld. Counsel for the defense that prosecution has miserably failed to prove the that there was intention on the part of the accused to commit alleged murder to the victims to this case. Moreover prosecution witnesses have never alleged that in the furtherance of common object all accused person committed assaulting to the informant and other victims to this case with intention to take theirs life away. Thus, the prosecution has miserably failed to prove the charge under section 307/149 of the I.P.C as leveled against accused persons. So having consideration the above facts, this court finds and holds that prosecution has miserably failed to bring the

sufficient oral as well as documentary and circumstantial evidences on record to prove the charges 307/149 of the I.P.C. beyond the all shadows of reasonable doubt as leveled against accused persons.

26. *Now the next question before this court is whether prosecution has succeeded to prove the charges under sections 147 and 148 of the I.P.C. jointly against the accused persons. No doubt that section 147 of the I.P.C.. deals with punishment for rioting, which requires an unlawful assembly of five or more persons with a common object to commit an offense. While Section 148 of the I.P.C. deals with rioting armed with a deadly weapon. From perusal of the evidence as adduced by the prosecution on record, it is evident that several accused as alleged by the prosecution witnesses are present at the place of occurrence. But prosecution has failed to prove that all of them shared a common object to commit rioting or that they were armed with deadly weapons in furtherance of such common object. P.W.-7, P.W.-1 and P.W.-6 have given general statements, but no specific overt act of rioting has been attributed to Pinki Kumari, Kanchan Yadav and Chunchun Yadav. Even against Satyanarayan & Pappu Kumar Yadav is only voluntarily causing hurt rather than establishing that they formed an unlawful assembly with other accused persons.. Moreover, from oral testimonies of the P.Ws. It appears that the place of occurrence is a dwelling houses of the both parties situated on a common land where both the parties reside. So, the presence of the other accused at the place of occurrence is very natural. While there is no specific allegation against the accused namely Chuchun Yadav and Kanchan Kumar Yadav that they committed some specific criminal act against the victims to this case. The prosecution has also failed to establish that the accused persons had formed an unlawful assembly with a common object to commit an offence. There is no reliable evidence to show that five or more persons shared such a common object. Further on the point of alleged weapons prosecution witnesses have not given constant and reliable oral evidence. So court finds and holds that prosecution has not succeeded to prove the charges u/s 147 and 148 of the I.P.C. beyaond the all shadows of reasonable doubt as leveled against the accused persons Hence, by granting the*

benefits of doubt, all the accused persons, namely Satyanarayan Yadav @ Satan Yadav, Pappu Kumar Yadav , Chunchun Yadav, Pinki Kumari and Kanchan Yadav, are hereby acquitted of the charges under sections 147 and 148 of the I.P.C.

27. Now the court will deal with the charges under sections 324/149 and 325/149 of the I.P.C. jointly. Section 324 of the I.P.C. prescribes punishment for voluntarily causing hurt by dangerous weapons or means, and Section 325 of the I.P.C. prescribes punishment for voluntarily causing grievous hurt. For conviction under sections 324/149 of the I.P.C. and 325/2149 of the I.P.C. the prosecution is under obligation to prove that the hurt was caused by dangerous weapons or that it was grievous in nature, and that such act was done in furtherance of the common object of the unlawful assembly. In the present case, although the witnesses have stated that the accused were armed with lathis, spear, etc., no such weapons were seized or produced before this court. Further, prosecution witnesses have not given constant and reliable evidences on the point of weapons allegedly used by the accused persons. Further prosecution has not examined to the concerned medical officer who treated to the victim to this case namely Madan Yadav. Further neither x-ray report not x-ray was produced before court. Further Injury report was not got on record exhibited. Further there is no explanation on behalf of the prosecution as to why Medical officer was not examined or X-ray report and X-ray plate were not produced before court. While no doubt that in the absence of medical evidences, it cannot be successfully ascertained as to whether the injuries were simple, grievous, or caused by specific weapons. Furthermore, since the court has already hold that prosecution has not succeeded to prove the charges u/s 147, 148, 307 of the I.P.C. So, on the same facts it would not be proper to hold that accused persons committed the offense u/s 324/149 and 325/149 of the I.P.C. in furtherance of common object of the unlawful assembly. Furthermore, there is no specific evidence to show that the alleged hurt was caused by a dangerous weapon by the accused persons in furtherance of the common object of alleged unlawful assembly. Hence, court finds and holds that the prosecution has miserably failed to prove

the charges under sections 324/149 and 325/149 of the I.P.C. beyond the all shadows of reasonable doubt as leveled against the accused persons. Hence by granting the benefit of doubt aforesaid all five accused persons, namely Satyanarayan Yadav @ Satan Yadav, Pappu Kumar Yadav , Chunchun Yadav, Pinki Kumari and Kanchan Yadav, are hereby acquitted from the charges u/s 324/19 and 325/149 of the I.P.C as leveled against the accused persons.

28. Now the rest question before this court that as to whether prosecution has succeeded to prove the charge u/s 323 of the I.P.C. as leveled against the all five accused person. While coming on the merit of the case court finds that informant has alleged in his written report inter alia that 13.07.2009 at about 04:00 O'clock on the point of Partition accused namely Satan Yadav, Kalo Devi, Kanchan Kumar Yadav, Chunchun Kumar Yadav and Pinki Kumari having used filthy words entered into house and courtyard and attacked with lathi, spear, Bansh ka Morha and iron rod and having thrown down to his son Bablu Yadav and his wife Dhuniya Devi and him started beating them. So it is evident that in his written report informant has stated that all accused committed assaulting to his son, wife and him. Further in his oral testimony P.W.-07 has deposed before this court inter alia that his elder brother Satyanarayan Yadav, and his nephews Pappu Kumar Yadav , Kanchan Yadav, Chunchun Yadav, Pinki Kumari, and Kala Devi (Bhabhi) entered in his house and started beating and told that it is my house. P.W.-07 has further stated that accused had lathis, Samat (blunt sticks) and Gupti. Gupti's lathi was in the hand of Styannarayan Yadav. The Samat was in the hand of Pappu Kumar Yadav and Lathi was in the hand of Chunchun Yadav and Kanchan Yadav also had a lathi. Pinki Kumari and Kala Devi had lathis. When they started beating him, the family members started rescuing him, then they also sustained injuries from lathi and fists. He was first hit by a lathi on his left hand and hand got fractured. He also sustained injury on the left hand by the Gupti's lathi. His eye was being taken about by throwing him down, Injury got occurred. his family members saved him. He sustained injuries on his legs, hands, and body. Further in his cross-examination, P.W.-07 has stated that total 02-04 and

10 lathi was inflicted. There was the injury of the Lathi, Spear and Samat (Musal). But prosecution has not succeeded to prove that there was injury on the body which was caused by caused specific weapon. The first lathi blow was on his left hand struck by Satyanarayan Yadav. The second lathi blow was struck on his right leg by Satyanarayan's son and daughter. But any other witness of prosecution has never stated that Madan Yadav was assaulted by the daughter of Satyanarayan Yadav. Further P.W.-01 Bablu Kumar Yadav who is the victim to this case has deposed before this court inter alia that Satan Yadav, Pappu, Pinki, Chunchun, Kanchan and Kalo Devi came there having laced with lathis, a spear, Musal (pestle used for pounding) and knife, and started abusing all of them. Pinki caught hold of his mother. But he has never stated that Pinki Kumari beaten his mother. P.W.-01 has further stated that when he went to rescue her, all the accused persons started beating him with lathis and danda. The accused also beaten his father and fractured his left hand. Satan Yadav gave a blow of spear upon his father which hit near his right eye. But prosecution has not succeeded to prove that injury sustained by the Madan Yadav had been caused by Spear.. But P.W.-01 has never specifically stated against any other accused persons except Satan Yadav. Further in his cross-examination, P.W.-01 has stated that Pappu Kumar Yadav assaulted him on his head, right hand and left thigh by the means of Samat (Musal/ Pestle). He assaulted on two to three place of his head and two to three place of hand. So it is evident that P.W.-01 has only specifically stated against Satan Yadav and Pappu Kumar Yadav that they committed alleged assaulting but he has nothing stated against other accused persons. Further P.W.-06 Jhuniya Devi @ Dhuniya Devi who is the other victim to this case has deposed before this court inter alia that Satyanarayan Yadav, Pappu Kumar Yadav , Pinki Devi, Kajal Devi, Chunchun Kumar, and Kanchan Kumar had beaten her daughter, and had also beaten her husband and herself. She went to save them. She was also beaten. Satyanarayan Yadav and Pappu Kumar Yadav beaten her husband and got his both hands fracture. Kala Devi and Pinki Kumari beaten her. But it is notable that other witnesses of prosecution has never stated that Jhuniya @ Dhuniya Devi

was beaten by other accused person. Though further it is notable that P.W.-07 has stated that the first lathi blow was on his left hand struck by Satyanarayan Yadav. P.W.-01 has stated that he was assaulted by Pappu Kumar Yadav. Further it is notable that P.W.-06 has not leveled any specific allegation against Kanchan Kumar, Chunchun Yadav. Though she has stated that Kalo Devi and Pinki Devi assaulted her. But P.W.-01 has only stated that Pinki Devi caught her mother but he has never stated that Pink Devi assaulted to her mother. Further P.W.-07 has not specifically stated that Pinki Devi beaten his wife. So, it is evident that on the point of alleged act of assaulting by, Kanchan Yadav, Pinki Devi and Kalo Devi prosecution witnesses have not given constant and reliable oral testimonies. But from perusal of the oral testimonies of all the prosecution witnesses it is evident that P.W.-01, P.W.-06, and P.W.-07 have given only constant and reliable oral testimonies that Satyanarayan Yadav and Pappu Kumar Yadav committed alleged assaulting to the Madan Yadav and Bablu Yadav. Further P.W.-02 who is independent witness has also clearly stated that Madan Yadav was assaulted by Satyanarayan Yadav. Further P.W.-04 has also supported the case of prosecution to the some extent that he saw to the Madan Yadav in injured condition. While P.W.-05 has further stated that he saw to the Madan Yadav in hospital in injured condition. So from the perusal of depositions of all material witnesses of prosecution it is clear that prosecution has succeeded to prove that accused namely Satyanaran Yadav @ Satan Yadav and Pappu Kumar Yadav committed assaulting to the Madan Yadav and Bablu Yadav. But prosecution has not given constant and reliable oral testimonies to prove participation of the rest accused namely Chunchun Yadav, Kanchan Kumar Yadav and Pinki Devi. So it is evident that prosecution has successfully proved that alleged assaulting was committed by the accused namely Satyanarayan Yadav @ Satan Yadav and Pappu Kumar Yadav. But prosecution has not succeeded to prove that other accused namely Chunchun Yadav, Pinki Devi and Kanchan Kumar Yadav committed alleged assaulting.

29. Though, ld. counsel for the defense has submitted that that except for examining the injured there is no other independent witness. Although, it is clear from written report that alleged occurrence took place at 4:00 O'clock in evening and it has come on record that there were many other co-villagers available but none were examined. It was further submitted that the concerned doctor who examined the injured has not been produced. Even the X-Ray plate or X-ray report was not produced before court on record. It has been further submitted that there are material discrepancies in the deposition of the prosecution witnesses and such no reliance can be placed on the deposition of the prosecution witnesses.

30. On the other side, rebutting the submission of ld. counsel for the defense, it was submitted by learned A.P.P. that the injured are the best persons to depose about the incident and there is no reason to disbelieve their testimony. Even if no other independent witness has been examined that ipso facto is no ground to ignore the testimony of the injured. He has further submitted that all the prosecution witnesses have given the constant testimonies on the point of assaulting by the accused persons and some minor discrepancies are natural because the all prosecution witnesses have been examined after long gaps of the alleged occurrence.

31. I have given my considerable thoughts to the respective submissions of ld. counsel for the parties and have perused the record. From the perusal of the entire case record it is evident that P.W.-7-Madan Yadav an P.W.-1 Bablu Yadav have clearly stated that they were assaulted by Styanarayan Yadav and Pappu Kumar Yadav. While it is settled law that testimony of an injured witness stands on a higher pedestal than any other witness. As such, there is an inbuilt assurance regarding his presence at the scene of the crime and it is unlikely that they will allow the real culprit to go Scot free and they would falsely implicate any other persons. In *Abul Sayeed V. State of Madhya Pradesh* [(2010) 10 SCC 259], the hon'ble Supreme Court has held as under: The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. 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 a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailants in order to falsely implicate someone. No doubts that it is well settled law that the deposition of the injured witnesses should be relied upon unless there are strong grounds for rejection of their evidences on the basis of major contradictions and discrepancies. Convincing evidence is required to discredit an injured witnesses. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”

While in this case all injured witnesses were subjected to lengthy cross examination. Despite lengthy cross examination, they stood the test of cross examination and nothing could be elicited to show that the alleged incident had not taken place in the manner projected by them or that they had not been assailants at the hands of the accused. Further P.W.-02 who appears to be independent witness has also supported the case of prosecution. Further other witnesses of prosecution have at least stated that they saw to the Madan Yadav in injured condition. Furthermore, non examination of independent witness ipso facto is no ground to ignore the testimony of the injured. In the case of Appabhai and Anr. Vs. State of Gujarat, AIR 1998 SC 696, where it was held as under:- . “..It is no doubt true that the prosecution has not been able to produce any independent witness to the incident that took place at the bus stand. There must have been several of such witnesses. But the prosecution case cannot be thrown out or doubted on that ground alone. Experience goes to show that generally, people does not want to put his leg in witness box until his close relative is involved in the case. Again, in the wake of the direct evidence of the witnesses, court is not inclined to accept the contention that all the prosecution witnesses are interested witnesses so, no reliance can be placed on the testimonies of the such interested witnesses. P.W.-01, P.W.-07 who have clearly stated that they were assaulted by the accused namely Satyanarayan Yadav and Pappu Kumar Yadav, Further some other prosecution witnesses just like P.W.-02

who appears to be independent witness of this case as well as some other witnesses have also supported the case of prosecution to the some extent. Further the evidences given by aforesaid both witnesses could not be shaken even in theirs respective cross-examination. So, after careful consideration on the all materials as well as evidences on record court comes to this definite view that prosecution has successfully proved the charge u/s 323 of the I.P.C. beyond the all shadows of reasonable doubt as leveled against the accused namely Satyanarayan Yadav @ Satan Yadav and Pappu Kumar Yadav. But prosecution has not succeeded to prove the charge u/s 323 of the I.P.C. beyond the all shadows of reasonable doubt as leveled against the accused namely Chunchun Yadav, Pinki Devi and Kanchan Kumar Yadav.

32. So having consideration the evidences available on the record and in the light of the discussion as made in previous paragraph, this court is of this definite view that prosecution has not succeeded to prove its case under section 147, 148, 323 504, 324/149, 325/149, 452, 307/149 of the I.P.C. beyond the all shadows of reasonable doubts as leveled against the aforesaid accused persons namely Chunchun Yadav, Pinki Kumari and Kanchan Kumar Yadav. So, by granting the benefits of doubt accused namely Chunchun Yadav, Pinki Kumari and Kanchan Kumar Yadav are hereby acquitted from the all charges as leveled against them, since accused namely Chunchun Yadav, Pinki Kumari and Kanchan Kumar Yadav are on bail, so they and theirs bailors are hereby discharged from the liabilities of theirs respective bail bonds.

Further, as in previous paragraphs it has already been concluded that prosecution has not succeeded to prove its case u/s 147, 148, 504, 324/149, 325/149, 452, 307/149 of the I.P.C. beyond the all shadows of reasonable doubts as leveled against the aforesaid accused persons namely Satyanarayan Yadav @ Satan Yadav and Pappu Kumar Yadav. So, by granting the benefits of doubt accused namely Satyanarayan Yadav @ Pappu Kumar Yadav are hereby acquitted from the charges 147, 148, 504, 324/149, 325/149, 452, 307/149 of the I.P.C. as leveled against them

But from the discussion as made above it is clear that prosecution has succeeded to prove that accused namely Satyanarayan Yadav @ Satan Yadav and Pappu Kumar voluntarily caused hurt to the Madan Yadav and Bablu Yadav and thereby committed an offense punishable u/s 323 of the I.P.C. Hence, accused persons namely Satyanarayan Yadav @ Satan Yadav and Pappu Kumar Yadav are found and held to be guilty for committing offense under section 323 of the I.P.C and accordingly aforesaid both accused persons are convicted thereunder. Since aforesaid both accused persons are on bail, so the bail bonds of above named accused persons are hereby canceled and they are taken in to custody. Further proceedings of the court is stayed for sometimes. Let the matter be placed for hearing on the point of sentence .

(Asutosh Rai)

Addl. Sessions Judge II, Katihar

01-08-2026

Hearing on the point of sentencing

1. Coming to the quantum of sentence, heard the the learned A.P.P. for the prosecution as well as learned counsel for aforesaid convicted accused persons namely Satyanarayan Yadav @ Satan Yadav and Pappu Kumar Yadav.. Learned A.P.P. for the state has submitted that benefit of probation cannot be granted to the accused persons. Because accused persons brutally assaulted to the injured to this case. So, in view of fact and circumstances of the case maximum punishment be awarded to the aforesaid convicted accused persons .

On the other hand learned counsel for the aforesaid convicted accused persons namely Satyanarayan Yadav @ Satan Yadav and Pappu Kumar Yadav has submitted that it is the first offense of the aforesaid convicted accused persons and there is no evidence about the previous conviction in this regard and they have no criminal antecedent and prosecution has not been brought forth any evidence except for the present case So the lenient view should be taken and benefit of section 3 of the probation Act 1958 should be granted to the aforesaid all convicted accused persons.

2. Heard the both parties at length and perused the entire case record. From the perusal of case record it is evident that aforesaid convicted accused persons have not been found guilty of any offense on previous occasion. However, considering the fact that the incident took place in the year 2009 and the accused persons are facing protracted trial for the last more than 17 years. So having consideration the above facts and the nature of the offence I find and hold that it is fit case to give the benefits of sec. 3 of the Probation Act to the aforesaid all accused persons.

ORDER

3. So taking into the consideration all the facts and nature of the offense the benefits of provision of sec. -03 of the Probation Act is here by granted to the aforesaid both convicted accused persons namely Satyanarayan Yadav @ Satan Yadav and Pappu Kumar Yadav and after due admonition aforesaid both accused persons are hereby free from this case .

4. *Office is directed to send a copy of judgment to the D.M., Katihar in compliance of section 365 of Cr.P.C.*

5. *Office is further directed to consign the case record to the D.R.R, Katihar after necessary compliance, if any.*

Judgment was dictated and corrected by me and same was pronounced by me in open court.

(Asutosh Rai)

Addl. Sessions Judge II

Katihar

01-08-2026

(Asutosh Rai)

Addl. Sessions Judge II

Katihar

01-08-2026

IN THE COURT OF ADDL. SESSIONS JUDGE-II KATIHAR
Sessions Trial Case No.-447/2010

LIST OF PROSECUTION WITNESSES:-

<i>Sr. No.</i>	<i>Pws. Number</i>	<i>Description</i>
<i>01</i>	<i>PW-01- Bablu Kumar Yadav</i>	<i>Victim to this case.</i>
<i>02</i>	<i>PW-02- Md. Iftekhar @ Intkhab</i>	<i>Eye witness</i>
<i>03</i>	<i>PW-03- Laxman Yadav</i>	<i>Eye Witness</i>
<i>04</i>	<i>PW-04- Jaggi Yadav</i>	<i>Heresay Witness</i>
<i>05</i>	<i>PW-05- Dhanilal Yadav</i>	<i>Hostile Witness</i>
<i>06</i>	<i>PW-06- Jhuniya Devi @ Ghuniya</i>	<i>Victim to this case</i>
<i>07</i>	<i>PW-07- Madan Yadav</i>	<i>Informant to this case</i>
<i>08</i>	<i>PW-08- Raj Kumar Keshari</i>	<i>Hostile Witness</i>

LIST OF PROSECUTION EXHIBITS

<i>Sr. No.</i>	<i>Exhibit No.</i>	<i>Description</i>
<i>01</i>	<i>N/A</i>	<i>N/A</i>

LIST OF DEFENCE WITNESS

<i>RANK</i>	<i>NAME</i>	<i>NATURE OF EVIDENCE</i>
<i>I</i>	<i>N/A</i>	<i>N/A</i>

LIST OF DEFENCE EXHIBITS

<i>Sr. Number</i>	<i>Exhibit Number</i>	<i>Description</i>
<i>I</i>	<i>N/A</i>	<i>N/A</i>

(Asutosh Rai)
Addl. Sessions Judge-II, Katihar
01-08-2026