

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.657 of 2002

Against the judgment of conviction and order of sentence dated 12.09.2002 passed in Session Case No.5 of 2002/399 of 1993 by Adhoc Sessions Judge, Gaya.

1. Nand Kumar Yadav alias Nand Lal Yadav.
2. Mahendra Yadav
3. Rajendra Prasad,
all sons of late Tuhai Yadav, resident of Village-Alalpur, P.S. Belgaganj,
District-Gaya.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Shambhu Sharan Singh, Advocate
For the Respondent/s : Mr. Sujit Kumar Singh, A.P.P.

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 09-11-2017

Appellants, challenge their conviction for offence under Section 324 of the Indian Penal Code and sentence to undergo two years rigorous imprisonment in Sessions Trial No.5 of 2002/399 of 1993 by the learned Adhoc Sessions Judge, Gaya on 12.09.2002.

It is the case of the prosecution that the informant Munna Yadav, who was going to his house on 25.10.1992 at about 6 P.M. was waylaid by the appellants, he was asked to sing a song and when he denied, he is said to have been assaulted. Even though the appellants were prosecuted for offences under Sections 307, 324, 323 and 341 of the Indian Penal Code, but after examining 8 witnesses and based on the statement of P.W.8 Ramji Singh, the



Investigating Officer, it has been found that the informant have suffered simple injury and the conviction is only ordered under Section 324 of the Indian Penal Code to undergo two years rigorous imprisonment.

Learned counsel for the appellants took me through the statement of various witnesses that it is case of false implication, the incident has not occurred and he points out that for the same incident counter case and compliant was lodged by the appellants against the informant and others. They were put to trial in Sessions Trial No.23 of 2002/451 of 1993 and were facing prosecution for offence under Sections 302, 147 and 323 of the IPC and vide judgment dated 12.09.2002, they have been convicted. Accordingly, it is a case that the appellants have not committed any offence and they have been falsely implicated.

However, learned counsel for the prosecution took me through the statement of P.W.1 Birendra Yadav, P.W.3 Ram Bhajan Yadav and P.W.6, the informant Munna Yadav, to say that the witnesses have proved the happening of the incident and from the statement of P.W.7 Dr. Ram Bhajan Choudhary and the injury report available, the injury on the person of the informant is proved.



Having bestowed the anxious consideration on the facts and circumstances of the case, I am of the considered view that the incident did happen and the injured did suffer the simple injury, but at the same time, the complainants were also aggressive and they had been convicted and sentenced.

Taking note of the totality of the circumstances, as prayed for by the learned counsel for the appellants, it is a fit case where even though interference in conviction is not called for, but the benefit of Section 360 of the Code of Criminal Procedure can be extended to the appellants and there being no criminal antecedents of the appellants, they can be directed to be released on probation in exercise of power available to this Court under Section 360 of the Code of Criminal Procedure.

Accordingly, upholding conviction of the appellants, they are directed to be released on probation on furnishing a bond to the satisfaction of the District authorities for a period of one year for keeping to maintain peace and tranquility in the area.

(Rajendra Menon, CJ)

Sunil/-

AFR/NAFR	NAFR
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