

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.16 of 2011

1. Bachchalal Yadav, Son of Ram Krishna Yadav
2. Sunil Yadav, Son of Bachchalal Yadav
3. Satyabhama Devi, Wife of Bachchalal Yadav
All residents of Village Jainagar, PS Bhargama, District Araria

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Bikram Deo Singh, Advocate Mr. Mukesh Kumar Rana, Advocate
For the State	:	Mr. Abhay Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT

Date : 05-02-2018

Heard learned counsel for the appellants and the learned APP
for the State.

2. This appeal has been preferred against the judgment of conviction and order of sentence dated 22.12.2010, passed by Mr. Jitendra Nath Singh, the learned Additional Sessions Judge, Fast Track Court No.-IV, Araria in Sessions trial No.546 of 2005/Trial No.022 of 2008, arising out of Bhargama P.S. Case No.109 of 2003 whereby appellants have been convicted under Sections 323, 341 and 380 of the Indian Penal Code. In addition to that the appellant no.2 has further been convicted under Section 324 of the Indian Penal Code. The appellants have been sentenced to undergo SI for one year under Section 323 of the Indian Penal Code, SI for



one month under Section 341 of the Indian Penal Code and RI for three years under Section 380 of the Indian Penal Code and also to pay fine of Rs.2000/- and in default of making payment of fine to further undergo two months' SI. Appellant No.2, namely, Sunil Yadav besides the aforesaid sentence has been further sentenced to undergo three years of RI for committing offence under Section 324 of the Indian Penal Code. However, all the sentences were directed to run concurrently.

3. Learned counsel appearing on behalf of the appellants limits his argument only on the point of sentence making plea that the appellant no.1 and the informant Surendra Prasad Yadav are full brothers and injuries caused to the informant are simple in nature. Besides this, more than 12 years have passed and the appellants have not been previously convicted by any court of law for any other offence, therefore, benefit of Section 360 Cr.P.C. should be given to them by releasing the appellants on probation of good conduct or under Section 4 of the Probation of Offenders Act.

4. Having gone through the entire case record and considering the submissions of both sides it appears that the appellant no.1 and the informant are full brothers and rest two appellants are family members moreover due to land dispute the



alleged occurrence took place and brothers fought with each other though the injury sustained by the informant is simple in nature. More than a decade has passed since the alleged occurrence and there is no material on record to show conviction of appellants prior to present case, so they are first time offenders and they may be released on probation of good conduct under Section 4 of the Probation of Offenders Act. In the case of *Roshanali Burhanali Syed v. State of Gujarat*, reported in *AIR 1982 SC 784(1)*, the Supreme Court has observed that accused above 21 years of age can still be released under the Probation of Offenders Act because the provisions of Section 4(1) of the Act does not contain any restriction that offender must be 21 or below that age. Although this restriction is to be found in Section 6. The appellants have been punished up to the maximum period of three years only though they were above age of 21 years on the date of conviction, so having considered the circumstances in which the offence was committed and taking into account the age, character and relationship between the appellants and the informant, the Court finds it expedient to release the appellants on probation of good conduct instead of sentencing them or maintaining the sentence as awarded by the trial court, so their conviction of imprisonment is set aside and directed to be released on entering into a bond with



sureties of 10,000/- each with two securities of the same amount to appear and receive sentence when called upon during period of three years and in the meantime to keep the peace and bear a good behaviour.

5. With the modification in the sentence while upholding the conviction, the appeal stands dismissed.

(Arun Kumar, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
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