

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.36 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- SIWAN

- =====
- 1. Satyendra Tiwari
 - 2. Amrendra Tiwari @ Rabindra Tiwari
- Both S/o Ramakant Tiwari, resident of village- Tiwari Ke Bhatkan, P.S.- Andra, District- Siwan.

.... Appellants

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Parmeshwar Mishra (Amicus Curiae)

For the Respondent/s : Mr. Shivesh Chandra Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 20-01-2018

No one appears on behalf of the appellants.

The appeal is pending since 2003 in order to dispose of the old cases. The Court requested Mr. Parmeshwar Mehta, Advocate, who is present in the court to assist the Court. Accordingly, he has been appointed as Amicus curiae to assist the Court on behalf of the appellant.

The present appeal is against the Judgment and order dated 20th December, 2002 passed by 1st Additional Fast Track Court at Siwan in Sessions trial No. 39/2000/ 109/2002

The prosecution case on the basis of Fardbeyan of one Baijnath Tiwari on 22.01.1999 is that while he was going from his



village to village Bharaul by cycle and when he reached north of the house of Ramakant Tiwari, caught hold of the handle of the cycle of informant, while saying then the informant be killed on that day and on this expression, his sons Satyendra Tiwari armed with Farsa and Amrendra Tiwari @ Rabindra Tiwari armed with Bhala arrived there. It is alleged that the Satyendra Tiwari with intention to kill the informant, hurted Farsa aiming at his head and the informant after receiving the head injury fell on the ground and thereafter, accused, Amrendra Tiwari @ Rabindra Tiwari dealt the informant with Bhala with intention to kill him, which hit the left ankle and left middle finger and left leg. It is also alleged that accused Ramakant Tiwari assault the informant with lathi, causing injury on right leg and left leg and back. It is stated that the occurrence was witnessed by some of the villagers. The police after investigation submitted charge sheet against the accused persons under Sections 341, 323, 324 and 307/34 of the Indian Penal Code. After framing of charges, the accused persons pleaded not guilty and as such they were subjected to trial.

On behalf of prosecution altogether four witnesses including the informant have examined and after trial, the learned court convicted the Appellant No. 1. Satyendra Tiwari for the offence under Section 323 of the Indian Penal Code and sentenced to under



Rigorous imprisonment for three months only and Appellant No. 2, Amrendra Tiwari @ Rabindra Tiwari for the offence under Section 324 of the Indian Penal Code and both the appellants were sentenced to Rigorous imprisonment for three months and one year, respectively. The incident in this case took place on 22.01.1999 and the present Appeal remained pending for fifteen years.

Amicus Curiae, Mr. Parmeshwar Mehta appearing on behalf of the appellants submitted that in the present case, the appeal remain pending for 15 years and considering the nature of allegation and the conviction of the appellants under Sections 341, 323, 324 and 307/34 of the Indian Penal Code and sentence of three months and one year, respectively, instead of going into merit of the case, the Court may proceed and adopt pragmatic view considering the ordeal of trial and pendency of this appeal for more than 18 years and reduces the sentence while upholding the conviction.

Mr. Shivesh Chandra Mishra, learned counsel appearing on behalf of the State admitted that the appeal remained pending for 15 years and the appellants were convicted for offence under Sections 323 and 324 of the Indian Penal Code he has not been able to controvert the submission of Mr. Mehta submitted that at this stage, no Penalogical purpose would be served by sending the appellant to jail to serve the remaining sentence.



Considering the facts and circumstances of the case and for doing the justice while up holding the conviction, the sentence is reduced to the period undergone.

Under the aforesaid judgment of the Trial Court is modified, the Appeal stands partly allowed, conviction is affirmed but the sentence is reduced to period undergone.

Since the appellants are on bail and they are discharged from the liabilities of bail bonds.

(Anil Kumar Upadhyay, J)

Sudha/-

AFR/NAFR	NAFR
CAV DATE	NA
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