

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.88 of 2003

Against the judgment of conviction and order of sentence dated 31st January, 2003 passed in Sessions Trial No.587 of 1992 by Additional Sessions Judge-cum- P.O. (Fast Track Court- 3rd), Ara Bhojpur.

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1. Mohan Upadhayay, S/o Sri Baikunth Upadhayay
 2. Baikunth Upadhyay, son of late Brameshwar Upadhyay
 3. Surendra Upadhyay, son of Sri Baikunth Upadhyay
 4. Tuntun Upadhyay, son of Sri Baikunth Upadhyay
 5. Bawanbir Upadhyay, son of Sri Baikunth Upadhyay

All of resident of village- Barnau, P.S. Jagdishpur, District-Ara, Bhojpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Subodh Kumar Jha, Advocate
Mr. Sarveshwar Tiwary, Advocate

For the Respondent/s :

CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 05-01-2018

Challenging their conviction ordered by the Additional Sessions Judge-cum Fast Track Court- 3rd- Ara, in Sessions Trial No.587 of 1992 by judgment dated 31st January, 2003, the five appellants herein have filed this appeal.

Appellants herein have been convicted to undergo two years RI for offence under Section 324 of the Indian Penal Code and six months RI For offence under Sections 341 and 353 of the Indian Penal Code. Appellant No.2 Baikunth Upadhayay, who was 72 years of age on the date of judgment in the year 2003, is reported



to have expired and, therefore, the appeal as far as this appellant is concerned, stands abated.

It is the case of the prosecution that on 19.06.1988 at about 2:15 in the afternoon, when Madan Singh, an Advocate along with Pleader Commissioner Sri Maharana Pratap Singh was conducting local inspection on the basis of commission awarded to him, accused persons, namely Baikunth Upadhyay, Rang Nath Upadhyay, Mohan Upadhyay, Surendra Upadhyay, Tuntun Upadhyay, Bawanbir Upadhyay came to the informant, took him away with intention of killing him and when the Pleader Commissioner Maharana Pratap Singh objected, it is said that the accused Baikunth Upadhyay, since dead, instigated the accused persons to assault the Chowkidar present there, on which it is the case of the prosecution that one Nagendra Upadhyay gave 3 to 4 blows on the head with a brick and Madan Singh, the advocate, sustained injury and fell unconscious. It is further alleged that on the instigation of Baikunth Upadhyay, a Farsa was brought there by accused Meera Devi, daughter of Baikunth Upadhyay, but it was not used. Meera Devi has been acquitted from the charges levelled against her.

From the evidence and the materials available on record it is clear that the incident took place in the year 1988. The allegations



of instigation are against the deceased appellant Baikunth Upadhayay and the prosecution case itself is that Nagendra Upadhayay gave 3 to 4 blows on the head with a brick on Madan Singh, Advocate. Nagendra Upadhyaya is not before this Court and there is no appeal filed by him which has come up for consideration. As far as the present appellants are concerned, appellant No.2 Baikunth Upadhayay has expired and with regard to other appellants Mohan Upadhayay, Surendra Upadhayay, Tuntun Upadhyay and Bawanbir Upadhayay, no specific overtact is attributed to them and at best only their presence on the spot is made out. That apart, the Investigating Officer has not been examined and even the doctor, who examined the injured person has not been examined, on the contrary, the report of the injury has been proved by an Advocate's Clerk, who stated that the injury report was not prepared in his presence.

Taking note of the facts and circumstances it is a fit case where with regard to remaining four accused persons, namely Mohan Upadhayay, Surendra Upadhyay, Tuntun Upadhayay and Bawanbir Upadhyay, in the absence of their being any specific overt act attributed to them, their conviction to undergo RI for six months for offence under Sections 353 and 341 IPC cannot be sustained. The appeal so far as these four appellants are concerned,



is allowed. The appellants are acquitted of the charges levelled against them and they are set free after cancellation of their bail bonds.

(Rajendra Menon, CJ)

Sunil/-

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