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MD. MONIR ALAM
v.
STATE OF BIHAR
(Criminal Appeal No.133 of 2003)

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NOVEMBER 19, 2009

[HARJIT SINGH BEDI AND DR. B.S. CHAUHAN, JJ.]

Probation of Offenders Act, 1958:

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s.4 – Release of offender on probation of good conduct – Conviction of offender by trial court along with others u/s 304 (part-II) and 323 IPC with a sentence of three years observing that the incident was in fact a free fight – High Court modifying the conviction to one u/s 304 (part-II)/149 and s.323

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IPC – Held: Offender has secured a Doctorate and employment as a Senior Assistant Professor – His professional qualifications show his expertise in his specialty and also portray his association with prestigious organisations worldwide in the field of strategic studies – His conduct and attainment after his involvement in the matter justify his release on probation – He shall be released on probation u/s 4 of the Act on the terms settled by trial court – Penal Code, 1860 – ss.304 (part-II)/149 and 323.

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 133 of 2003.

From the Judgment & Order dated 2.5.2002 of the High Court of Judicature at Patna in Criminal Appeal No. 84 of 1999(S) (J).

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R.S. Suri, Azim H. Laskar, Abhijit Sengupta and Bikas Kar Gupta for the Appellant.

Ritesh Kumar Chauhary, Gopal Singh, Manish Kumar and Anuj Prakash for the Respondent.

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The following Order of the Court was delivered

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O R D E R

1. This appeal by way of special leave arises out of the following facts:

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2. At about 3 P.M. on 26th of February 1992, a demarcation of the land between the deceased Imteyaz Ali and Manjoor Alam, the uncle of the appellant was being conducted by the Revenue Amin. During the course of the demarcation, it transpired that the house belonging to Manjoor Alam had fallen in the portion falling to the deceased, Imteyaz Ali. As the Amin proceeded to fix the pillars demarcating the land, a protest was raised by Manjoor, and he attempted to interfere in the proceedings. Imteyaz Ali, however, intervened and requested his relatives to allow the Revenue Officials to fix the pillars. This led to an quarrel between the parties during which Manjoor Ali, Kammurddin, Monir Alam and several others caught hold of Imteyaz and on Kammurddin's exhortation assaulted with a lathi. Imteyaz fell down to the ground whereafter Manjoor and Monir Alam again assaulted him and when Md.Tufel, Fatma Khatoon and Ajmeri Nisa came to intervene in favour of Imteyaz, they too were assaulted. The parties were, however, separated by the intervention of the Amir and other Officials and also the Police Havildar who too was present to oversee the demarcation. Imteyaz and the other injured persons were carried to Barauli Hospital from where Imteyaz was referred to Gopalganj and yet further to Patna where he succumbed to his injuries. The defence of the accused was that during the course of the demarcation in which the police Havildar was also present, it was the complainant party who had attacked them with lathi etc. and injuries were caused to them by Imteyaz, Sahnawaj and others with lathis. A cross-case was accordingly registered against the other set of accused as well. The trial court, however, in the present matter, acquitted all the accused on the charge of murder but convicted them under Section

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A 304(II) and 323 of the IPC and sentenced them to various terms of imprisonment with the appellant Monir Alam being awarded a sentence of three years on the premise that the incident was in fact a free fight between the two parties. The matter was taken in appeal by Monir Alam to the High Court. The High Court modified the conviction from one under Section 304(II) and 323 simplicitor to one under Section 304(II)/149 of the IPC and 323 of the IPC and also took up the revision filed by the complainant against the acquittal of three of the accused, namely Nisar, Uudus and Kummaruddin. The High Court held that the acquittal of some of the accused was not justified but refused to interfere in revision on the ground that the proceedings had gone on for several years. The High Court therefore in effect confirmed the judgment of the trial court. The present appeal has been filed only by Md. Monir Alam who has been awarded a sentence of 3 years rigorous imprisonment.

3. Mr. R.S.Suri, the learned counsel for the appellant has raised several arguments during the course of hearing. He has pleaded that in the light of the fact that the trial court had given a positive finding that the incident was the outcome of a free fight and had taken place all of a sudden, it was not open to the High Court to have modified the conviction to one under Section 304(II) read with Section 149 of the IPC and that too without appeal or notice to the accused though in the end the High Court had, in fact, confirmed the judgment of the trial court. He has also submitted that the appellant, who had, in the meanwhile, secured a very prestigious employment, should be released on probation. He has pointed out that as both the parties were very closely related to each other and had admitted that the incident had happened all of a sudden with a cross case registered against the opposite party, some consideration ought to be given to the appellant. He has also put on record several documents to show the present state of affairs.

4. We have considered Mr. Suri's submissions very

carefully. We see from the documents that the appellant has secured a Doctorate and is presently employed as a Senior Assistant Professor in the Department of Strategic and Regional Studies, University of Jammu and that he had secured this appointment in the year 1997. His professional attainments have also been provided to us which shows his expertise in his specialty and also portrays his association with prestigious organizations worldwide in the field of strategic studies. We are, therefore, of the opinion that his conduct and attainments after his involvement in this matter justifies his release on probation. We, accordingly, dismiss the appeal but direct that he shall be released on probation under Section 4 of the Probation of Offenders Act, 1958 on terms to be settled by the trial court.

R.P.

Appeal dismissed.