

disappeared. The accused also caused her bleeding injury on her head. She was unable to move, so she could not come immediately. It has also been alleged that since last ten years they are doing high-handedness on her to kill. They had also done high-handedness with her parents also. It is also stated that she resides in a Khandahar alone. It has also been stated that she is helpless lady and her clothes were also torn.

4. On the basis of the above information, FIR was registered as Bundu P.S. Case No. 55 of 2006 against the accused person for the offences under Sections 341/323/307/34 of the IPC. After completion of investigation, charge-sheet was submitted against the appellants under Sections 341, 323, 504/34 of the IPC.

5. After taking cognizance of offence, the case was committed to the Sessions thereafter, the charges were framed for the offences under Sections 307/34 and 341/34 of the IPC which they denied and claimed to be tried.

6. In order to substantiate the charges levelled against the accused persons altogether 7 witnesses were examined by the prosecution.

P.W.-1 Matu Oraon

P.W.-2 Lal Lohra

P.W.-3 Gurudayal Lohra

P.W.-4 Bidya Jaiswal (Informant and victim lady)

P.W.-5 Kamal Kishore Kamlesh

P.W.-6 Dr. Sudir Kumar Kaachhyap

P.W7 Said Akbal Ahmad (I.O)

7. Apart from oral testimony of the witnesses, following documentary evidence has also been adduced by the prosecution:-

Ext. 1- written report of Bidya Jaiswal (Victim, Informant),

Ext. 2- Injury Report, Victim Bidya Jaiswal

Ext. 2/1 Injury Report of Bidya Jaiswal (Informant & victim lady)

Ext.3 Formal FIR .

8. On the other hand no witness has been examined on behalf of defence. However, two documentary evidence has been adduced i.e

Ext. A-Certified copy of judgment in Title Suit No. 12/1999 & 51/2005

Ext. B- Certified copy of Decree in Title Suit No. 12 of 1999.

9. After conclusion of trial, impugned judgment and order has been passed which has been assailed in this appeal.

10. Without touching the merits of the judgment, learned counsel for the appellants, has confined himself for non-extension of the benefit of Section 4 of the Probation of Offenders Act, 1958 to which the appellants deserve. Admittedly, it was the first offence of the appellants as mentioned in paragraph 18 of the impugned judgment but the learned trial court has simply making observation that present appellants have assaulted a woman, has not extended the benefit of Probation of Offenders Act, 1958, which cannot be termed as special reason within the meaning of the Probation of Offenders the Act. Therefore, appellants may be released by extending the benefit of provision of Section 4 of the Probation of Offenders Act, 1958.

11. Per contra, Learned APP appearing for the State has opposed the aforesaid contentions and defended the impugned judgment on merits, but so far extending the benefit of Probation of the offenders Act, 1958 is concerned, he has admitted that it was the first offence of appellants.

12 I have gone through the record of the case along with the impugned judgment and order in the light of the contentions raised on behalf of both side.

13. It appears that there was previous enmity due to land dispute between the parties. Considering the overall factual background, genesis and manner of occurrence and the nature of offence committed by the appellants age, character and antecedent, it

appears expedient in the ends of justice to extend the benefit of Section 4 of the Probation of Offenders Act of 1958, instead of awarding substantive sentence of imprisonment as awarded by the learned trial court.

14. In view of the above, this appeal is **dismissed** on merits with modification in sentence to the extent that instead of undergoing substantive sentence of imprisonment awarded to the appellants by learned Trial Court, the appellants are directed to be released on furnishing bond of Rs.10,000/- (Rupees Ten Thousand) with one surety of like amount to the satisfaction of learned trial court under Section 4 of Probation of Offenders Act, 1958 within two months from the date of this order for maintaining peace and be of good behavior for one year from the date of furnishing the bond.

15. If the bond is not furnished within above stipulated time, the learned Trial Court shall issue notice upon the appellants to secure their attendance for furnishing the bond.

16. In case of violation of the terms and conditions of the bond, the appellants shall be called upon by the concerned trial court to appear and receive the sentence already awarded to them.

17. Pending I.A(s), if any, is also disposed of, accordingly.

18. Let a copy of this judgment along with Trial Court Records be sent back immediately to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)