

Criminal Appeal No.01 of 2009

1. Rakesh Shrivastava, S/o. Late Shambhusharan Shrivastava R/o Jarahi Colony, Quarter No.M/338, Chowki Bhatgaon, P.S. Pratappur, Distt.-Surguja (CG)
2. Raju @ Rajiv S/o Late Shambhunarayan, Aged about 22 years, R/o Jarahi Colony, Quarter No. M/338 Chowki Bhatgaon, P.S. Pratappur, Distt.-Surguja (CG)
3. Rohit S/o Late Shambhusharan Shrivastava R/o Jarahi Colony, Quarter No. M/338 Chowki Bhatgaon, P.S. Pratappur, Distt.-Surguja (CG)
4. Guljar Mohammed S/o Gulab Mohammed, Aged about 25 years, R/o Jarahi Mod, Chowki Bhatgaon, P.S. Pratappur, Distt.-Surguja (CG)
5. Mohammed Guddu S/o Gulab Mohammed, aged about 18 years R/o Jarahi Mod, Chowki Bhatgaon, P.S. Pratappur, Distt.-Surguja (CG)
6. Ashutosh Choubey @ Babalu Choubey S/o Ayodhyanath Choubey, Aged about 19 years, R/o Rajadih, P.S. Majgaon, Jharkhand, Hal Mukam Imlipara, Bhatgaon, Chowki Bhatgaon, P.S. Pratappur, Distt.-Surguja (CG)

---- Appellants

Versus

State Of Chhattisgarh Through P.S. Pratappur, Distt.-Surguja
(CG)

---- Respondent

For the appellants : Shri Jitendra Shrivastava, and Ms. Rashmi Verma, Advocates
For the respondent/State : Shri Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

13.12.2018.

1. This appeal is directed against the judgment dated 29.12.2008 passed by Additional Sessions Judge (FTC), Pratappur, Sessions Division Surguja (CG) in Session Trial No.438/2004 wherein the said Court convicted all the appellants for commission of offence

under Sections 147 and 324 read with Section 149 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for one year ; RI for two years and to pay fine of Rs.500/- each with default stipulation. In addition to that appellant Rakesh Shrivastava has been convicted for the offence under Sections 148 of the IPC and under Section 25(1B) (b) of the Arms Act, 1959 and sentenced him to undergo RI for one year; RI for one year and to pay fine of Rs.500/- with default stipulations.

2. In the present case, date of offence is 08.02.2004. It is alleged that all the appellants after forming unlawful assembly having deadly weapon assaulted Biju Dasan, Pradeep Singh, Shamser Singh and Bikesh Jaiswal and caused incised wounds on the body of the all the four injured. The matter was reported to Police Station Pratappur and the appellants were charge sheeted and after the trial, they were convicted as mentioned above.

3. Learned counsel for the appellants submits as under:

(i) Biju Dasan (PW-7) who lodged FIR has not supported the version of the prosecution and turned hostile, therefore, finding of the trial Court is not sustainable.

(ii) There is material contradiction in the statement of Biju Dasan (PW-7) and Asst. Sub Inspector KS Tiwari (PW-3) and there is difference in the statement of Bikesh Jaiswal (PW-1) and seizure memo prepared by the investigating officer. Therefore, seizure of the article as alleged is not established.

(iii) The trial Court has overlooked the material contradictions and omissions in the statements of prosecution

witnesses, therefore, benefit of doubt should have been given to the appellants.

4. On the other hand, learned counsel for the State while opposing the arguments submits that the findings arrived at by the trial Court is based on proper marshaling of evidence and the same is not liable to be interfered with invoking the jurisdiction of the appeal.

5. The appellants have been charge sheeted for assaulting Biju Dasan. Though Bikesh Jaiswal (PW-1) deposed that he has been assaulted by the appellants, but no charge is framed against any of the appellants for causing injury to Bikesh Jaiswal. In absence of charge the appellants cannot be held guilty for causing injury to Bikesh Jaiswal. Charges have been framed for causing injury to Biju Das, but the said Biju Das has not deposed against any of the appellants. As per the version of Biju Das, he was talking to one Pradeep at about 8.00 am at that time some one assaulted him from backside. It appears from the evidence of this witness that he had no occasion to see who assaulted him and what kind of weapon was used in assaulting said Biju Dasan. This witness has been subjected to leading questions by the prosecution side but nothing could be established against any of the appellants. Ganesh Chand (PW-8) has also not supported the version of the prosecution.

6. Bikesh Jaiswal (PW-1) has made general statement about all the appellants that they have assaulted Biju Dasan, Shamsheer and Pradeep, but from his version it is not clear as to who assaulted and on which part of the body of Biju Das. It is settled law that when a number of persons are prosecuted like the present one act of the

individual should be assigned for fastening liability on any of the individual person. Mere presence on the spot will not sufficient to hold that all the persons present on the spot have participated in the crime in question.

7. As per the version of Asst. Sub Inspector KS Tiwari (PW-3) one sword was seized from appellant Rakesh as per Ex-P/23. In the said document it is mentioned that the article was seized from the house of the said appellant. Section 25 of the Arms Act invoked for contravention to Section 4 of the said Act. Notification issued under Section 4 of the said Act says that any weapon should be possessed in public place. In the present case, seizure from the house of the appellant Rakesh is not a public place, therefore, it cannot be said that he was possessing a weapon in public place and was in possession of some deadly weapon. Section 148 of the IPC will attract only when one is having deadly weapon in furtherance of common intention of unlawful assembly. Since the weapon was seized from the house of appellant Rakesh it cannot be said that he kept the said weapon in furtherance of common intention while forming unlawful assembly.

8. For commission of offence under Section 25 of the Arms Act, 1959 it has to be established that the weapon was a sharp edged weapon. In the present case no expert had examined the weapon after seizure, therefore, in absence of evidence, it cannot be concluded that weapon seized from the said appellant was sharp edged weapon and therefore, charge under Section 25(1) of the Arms Act is not established against the said appellant. Charge under Section 148 of the Act is also not established.

9. The evidence adduced by the prosecution is shaky in nature. Victim/complainant Biju Das has not supported the version of the prosecution. Version of Bikesh Jaiswal (PW-1) who claimed to be the eye witness contradicted by the version of Biju Dasan and Ganeshdas. Looking to the entire evidence, specially when the complainant /victim has not supported the version of the prosecution it is not safe to record the finding that any unlawful assembly was formed to assault the victim Biju. In absence of evidence of Biju against any of the appellants, it is not safe to conclude that any of the appellants assaulted him. Version of Bikesh Jaiswal is general and bald in nature and looking to his evidence it is not safe to record the finding of guilt. Charges levelled against the appellants are not established. Finding arrived at by the trial Court is not sustainable.
10. Accordingly, the appeal is allowed. Conviction and sentence passed by the trial Court is set aside. The appellants are acquitted of the charges framed against them. The appellants are reported to be on bail. Their bail bond shall remain operative for a further period of six months from today in terms of Section 437A of the CrPC.

Sd/-
(Ram Prasanna Sharma)
JUDGE