

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 202 of 2011

Reserved on : 17.10.2019

Delivered on : 04-12-2019

1. Narad Lal, S/o Ramratan Sahu, aged about 45 years.
2. Paltan, S/o Ramratan, aged about 51 years.
3. Rikhiram, S/o Kapil Ram, aged about 37 years.
4. Bhajan, S/o Ramratan Sahu, aged about 40 years.
5. Narendra, S/o Paltan Sahu, aged about 33 years.

All are R/o Village- Kanketara, Police Station- Lalbag, District-
Rajnandgaon (C.G.)

---- Appellants

Versus

State of Chhattisgarh, Through: The Police Station- Lalbag, District-
Rajnandgaon (C.G.)

---- Respondent

For Appellants	:	Mr. Abhishek Sharma, Advocate.
For State/respondent	:	Mrs. Smita Jha, Panel Lawyer.
For Complainant	:	Mr. Rajat Agrawal, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 15.02.2011 passed by Special Judge, Rajnandgaon (C.G.) in Special Case No. 10/2008, wherein the said court convicted all the appellants in the following manner with further default stipulations:-

S. No.	Conviction	Sentence
1.	U/s 147 of IPC	R.I. for 6 months to Appellant No. 1, 4 & 5 only.
2.	U/s 452 of IPC	R.I. for 1 year each.
3.	U/s 323/149 of IPC	S.I. for 6 months and fine of Rs. 1000/- each.
4.	U/s 325/149 of IPC	R.I. for 3 years and fine of Rs. 3000/- each.
5.	U/s 148 of IPC	R.I. for 1 year to Appellant No. 2 & 3 only.

2. In the present case, victims are Kiran, Pilu, Bharti & Jagdish. The appellants are convicted under Section 323/149 of IPC for causing simple injuries to Kiran, Pilu & Bharti and under Section 325/149 of IPC for causing grievous hurt to Jagdish. All these victims have filed an application for compounding the offence.
3. As the offence under Section 323 & 325 of IPC are compoundable. They are permitted to compound and they are acquitted of the charges under Sections 323 & 325 read with Section 149 of IPC as per Section 320 (8) of the Cr.P.C.
4. The appellants are convicted for commission of offence under Sections 147, 148 and 452 of IPC. First question for consideration before this Court is whether the appellants have made unlawful assembly with deadly weapon and whether they entered into house of victims after preparation.
5. To substantiate the charge, the prosecution examined as many as 12 witnesses. Preparation for commission of offence is done before

commission of crime. There is no evidence that any of the appellant made preparation for commission of offence. The entire evidence is regarding assault by the appellants. In absence of evidence of preparation, charge under Section 452 of IPC is not established.

6. For commission of offence under Sections 147 & 148, it has to be established that there was common object of persons who made assembly, common object has to be proved by cogent evidence, but the witnesses have not deposed anything regarding object of assembly. There is evidence regarding assault, but the same is not sufficient to hold that there was any common object at the time of creation of assembly. The assembly may subsequently become an unlawful assembly, but the fact remains that common object has to be proved. In the present case, when main offence is compounded and the appellants are acquitted, the theory of common object automatically failed, therefore, charge under Section 147 & 148 of IPC is also not established.
7. Accordingly, the appeal is allowed. The conviction and sentence of the appellants is hereby set aside and they are acquitted of the charges framed against them. The appellants are reported to be on bail. Their bail bond shall continue for a further period of six months from today in view of Section 437-A of Cr.P.C.

Sd/-

(Ram Prasanna Sharma)

Judge