

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 672 of 2007

1. Rakesh Kumar Yadav, S/o- Dilchand Yadav, Aged about- 24 years, R/o- Village- Ghivra, Police Station- Dabhra, District- Janjgir- Champa (C.G.)
2. Shiv Kumar Sahu, S/o- Anjan Sahu, Aged about- 29 years, R/o- Village- Ghivra, Police Station- Dabhra, District- Janjgir- Champa (C.G.)

---- Appellants

Versus

- State of Chhattisgarh, through- District Magistrate, through Police Station- Dabhra, District- Janjgir- Champa (C.G.)

---- Respondent

For Appellants : Shri Akhil Mishra with Shri Anand Shukla,
Advocates.

For Complainant : Shri M.P.S. Bhatia, Advocate with
complainant Smt. Uma Bai.

For State/Respondent : Smt. Smita Jha, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

13/11/2019

1. This appeal is preferred against the judgment dated 16th July, 2007 passed by Sessions Judge/Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Janjgir- Champa (C.G.) in Special Sessions Case No. 6/2006 wherein the said Court convicted both the appellants for commission of offence under Sections 452 and 354 of IPC, 1860 and sentenced to undergo R.I. for two years and fine of Rs. 500/- and R.I. for one year respectively with default stipulations.
2. In the present case, the prosecutrix is (PW-2), who filed an application under Section 320 of Cr.P.C., 1973 for abetment of offence against the present appellants. Offence under Section 354 of IPC can be abetted by woman against whom assault or criminal force was used.

3. In the present case, complainant Uma Bai (PW-2) is the woman assaulted by the appellants. Uma Bai, the complainant is present in person.
4. The composition of offence under Section 354 of IPC shall have effect of acquittal as per Section 320(8) of Cr.P.C.. Accordingly, both the appellants are acquitted of charge under Section 354 of IPC. Offence under Section 452 is not compoundable, therefore, the question before this Court is whether the appellants having made preparation for causing hurt to victim Uma Bai (PW-2) or for assaulting her entered into her house and committed house trespass. Preparation is stage before attempt of criminal act.
5. The prosecution is under obligation to establish that any preparation was made for assaulting said Uma Bai.
6. To substantiate the charge, the prosecution examined as many as seven witnesses, but no one deposed before the trial court regarding preparation by the appellants for commission of offence. In absence of evidence of preparation charge under Section 452 of IPC is not established.
7. Accordingly, the appeal is allowed. Both the appellants are acquitted of the charge under Section 452 of IPC and accordingly their conviction and sentence is hereby set aside.
8. In view of the above, the appeal is allowed.

Sd/-

(Ram Prasanna Sharma)
Judge