

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 710 of 2011

1. Sallu @ Umashankar Kesharwani, S/o- Chhotelal, Aged about- 33 years.
2. Sanat, S/o- Chhotelal Kesharwani, Aged about- 42 years.
3. Golu, S/o- Khoru Kesharwani, Aged about-27 years.
4. Bholu, @ Yashwant, S/o- Khoru @ Chanar Kumar Kesharwani, Aged about- 21 years.

All are R/o Village Bhogahapara, P.S. Shivrinarayan, Distt.-Janjgir-Champa, (C.G.)

---- Appellants

Versus

State of Chhattisgarh, Through: District Magistrate, Janjgir-Champa (C.G.)

---- Respondent

For appellants in : Mr. Vivek Tripathi, Advocate

For State : Mr. Ishwar Jaiswal, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

09/12/2019

1. This appeal is preferred against the judgment dated 3rd September, 2011 passed by Special Sessions Judge, Janjgir Champa (C.G.), in Special Sessions Trial No. 199/2010 wherein the said Court convicted all the four appellants for charge under Sections 323 read with Section 34 & 323 read with Section 34 of Indian Penal Code, 1860 and sentenced them to undergo R.I. for three months and fine of Rs. 1000/- and R.I. for three months and fine of Rs. 1000/- respectively with default stipulations.
2. In the present case, victims/injured are Sanju Kumar Sarthi (PW-4) and Sanjay Ghasiya (PW-8). The date of incident is 7th November, 2010 at about 7.00 p.m. and FIR was lodged as per Ex.P-31 on 8th November, 2010 at Police Station

Sheorinarayan(*Aadim zaati Kalyan*). As per version of the prosecution, there was some dispute regarding payment of loan amount and on the said date quarrel was took place for the same, where victims have been assaulted by the appellants. The matter was reported, investigated, charge-sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) The injured have first started beating to the appellants and appellants have also lodged FIR against them. Therefore, it is not clear as to who is aggressor and finding arrived by the trial Court is not sustainable.

(ii) Number of persons were present on the spot but no one came forward which shows that story put forth by the prosecution is not correct version. Therefore, finding of the trial Court is liable to be set aside.

4. On the other hand, learned State counsel submits that finding of the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered with invoking jurisdiction of appeal.

5. All the statements of Sanju(PW-4) and Sanjay (PW-8) are establishing that all the four appellants have participated in crime in question and they are assaulted both the victims after gathering at the time of offence. Therefore, trial Court opined that they are acting in furtherance of common intention and looking to their entire version this Court has no reason to record contrary finding. Version of these two victims are

supported by the version of the Dr. Narayan Prasad (PW-3) who examined both the victims and found simple injuries on their body.

6. There is nothing in statements of the appellants that victims were aggressor in the present case. Their simple case is that they have falsely implicated in crime in question. Therefore, argument advanced on behalf of the appellants regarding right of his self defence is not sustainable. Case of the appellants does not fall in any of the exception mentioned in the IPC and they had reason to believe that their act will cause pain in the body of the victims. Act of the appellants are voluntary in nature and voluntary causing injury is not an offence under Section 323/34 of IPC for which the trial Court convicted them and same is hereby affirmed.
7. Heard on point of sentence. Injuries of the victims are simple in nature. Jail sentence is not compulsory for the said offence under Section 323 of IPC. Therefore, jail sentence imposed on the appellants is set aside. However, fine amount imposed on appellants shall remain intact.
8. With this modification, the appeal is partly allowed.

Sd/-

(Ram Prasanna Sharma)
Judge