

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 2105 of 2019

- Applicant

- Kallu @ Jagnesh Patel S/o Niranjan Patel Aged About 30 Years R/o Zone - 2, Balaji Nagar Khursipar, Police Station Khursipar, District Durg Chhattisgarh. Presently Resident At-Onpat, Molbhagwa Village, Tahsil and District - Surat, (Gujrat)

---- Respondent

For Appellant-State :- Shri Avinash Choubey, PL

Hon'ble Shri Prashant Kumar Mishra

Hon'ble Shri Gautam Chourdiya, JJ.

Order on Board

By

Prashant Kumar Mishra, J

17/09/2019

1. Heard.
2. The trial Court has acquitted the accused of the charges under Sections 148, 294, 506 Part-II, 460/149 and 307/149 of IPC and has convicted the accused only for committing offence under Section 323 of IPC.

3. The injured and the accused persons are resident of the same locality. At about 9:30 pm on 27.10.2015 complainant D. Bhanumati was in her house with other family members. At that time the accused persons committed house trespass to commit offence and after entering the house started abusing filthily; criminally intimidated all the members of the house; and assaulted herself as also to D. Janardan Rao, D. Venugopalrao and D. Jagdish. Initially the charge-sheet was filed against four accused persons namely, D. Chakradhar @ Shankar, D. Bhagyalaxmi, Smt. D. Nanda and D. Devi @ Anju, however, all of them were acquitted giving them benefit of doubt. The present respondent/accused was later on arrested on 03.10.2018 while another accused Shrinu Rao is still absconding.
4. Upon acquittal of 4 accused persons the charges under Section 148 of IPC and other offences which are charged with the aid of Section 149 of IPC do not survive as there can be no unlawful assembly of the remaining two accused including the present respondent/accused. In such case each of the accused will be responsible for his own act. PW-7, Amarnath, has seen the present accused assaulting D. Janardan Rao and D. Ramarao. The injuries sustained by these two injured persons have been examined by Dr. D.K. Patel (PW-12) and the Neurosurgeon Dr. Aadarsh Trivedi

(PW-9). Both these medical experts have not found any grievous injuries or injuries sufficient to cause death in the ordinary course of nature. Thus, finding the injuries to be simple in nature the Trial Judge has convicted the accused for offence under Section 323 of IPC and has sentenced him to undergo Rigorous Imprisonment for 8 months which is the period undergone by the accused during pendency of trial.

5. Considering the evidence of PW-7 Amarnath, who has stated that injuries sustained by D. Venugopalrao and D. Janardan Rao have been caused by means of club, the learned Trial Judge has rightly convicted the accused for offence under Section 323 of IPC.
6. No case for grant of leave to appeal against the acquittal is made out, accordingly, the present Cr.M.P. deserves to be and is hereby dismissed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge

Ankit