

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.635 of 2001**

- The State of Chhattisgarh

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Versus

1. Umesh Gupta alias Baba, aged about 30 years, S/o. Late Newalal R/o. Village Bikunthpur Distt. Koriya (CG)
2. Abdul Kaldir, aged bout 24 years, S/o. Abdul Fauf, R/o. Vllage Junapara, Bikuthpur Distt. Koriya (CG)
3. Lille alias Vijay, aged about 24 years, S/o. Matadin Village Bikunthpur Distt. Koriya (CG)
4. Bharat Lal aged about 26 years, S/o. Ram Bahori, Village Bikuthpur Distt. Koriya (CG)
5. Tillu alias Rakesh, aged about 23 years, S/o. Jagarnath R/o. Village Bikuthpur Distt. Koriya (CG)
6. Rup Narayan, aged about 36 years, S/o. Lagan Das. R/o. Village Dhauratikura Police Station Bikuthpur Distt. Koriya (CG)
7. Bablu alias Sharda, aged about 27 years, S/o Matadin, R/o. Village Hamalpara Road, Bikuthpur Distt. Koriya (CG)
8. Santosh, aged about 28 years, S/o. Udho Prasad, R/o. Bikuthpur Distt. Koriya (CG)
9. Guddu alias Firoz Khan aged about 29 years, S/o. Taj Mohammad, R/o. Village Mahalpara Road, Bikuthpur Distt. Koriya (CG)
10. Shankar aged about 32 years, S/o. Matadin, R/o. Village Bikuthpur Distt. Koriya (CG)
11. Javahar Lal, aged about 53 years, S/o. Ram Sundar, R/o. Bikuthpur Distt. Koriya (CG)
12. Rameshwar, aged about 67 yeas, S/o. Dev Kumar, R/o. Bikuthpur Distt. Koriya (CG)

---- Respondents

 For the appellant/State : Shri Dinesh Tiwari, Dy. Govt. Advocate
 For the Respondents : None

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board**

31.01.2020

1. The appeal is preferred against judgment of acquittal dated 10.01.2001 passed by Chief Judicial Magistrate, Baikunthpur, Distt. Korea (CG) in Criminal Case No.233/1993 wherein the said Court acquitted all the appellants for the commission of offence under Sections 147, 325, 323, 435 read with Section 149 of the Indian Penal Code 1860.

2. As per the version of the prosecution, the appellants have been charge sheeted for committing riot being members of unlawful assembly on 09.31993 at Bus stand Baikunthpur and also causing voluntarily grievous hurt to Jogendra Pal, Indrabhan Singh, and Habil Ekka and causing voluntarily simple injury to Lochan, Mahendra Ram and Ishwar Lal and also for causing mischief by fire to police vehicle bearing registration No.MP-P/3127.

3. Shiv Kumar Yadav (PW-1) deposed before the trial Court that when he reached to the bus stand he saw the vehicle in fire. Then he informed the incident at Police Station as per Ex-P/1. This witness is not the eyewitness account of the incident and from his statement, the story of the prosecution is not supported. Ishwar Lal (PW-2) deposed that when he reached to the spot, the vehicle was already on fire. Though he deposed that some quarrel took place between police officers and accused persons, but his version is not clear as to who really assaulted any of the police officer and by which instrument. Constable Mahataru Ram

(PW-3) deposed that a number of persons were engaged in the assault, but he could not identify them. His version is also not supportive to the case of the prosecution. Constable Fuljaise Bada (PW-4) though deposed that the accused persons assaulted one Indrabhan but this witness is also not sure as to who was the real person to assault Indrabhan amongst the appellants. Dhansai Baghel (PW-5) deposed that the accused persons broken the glass of the vehicle, but his statement is general in nature and he is not able to state who really broke the glasses of the vehicle. He is also not able to state who really set fire on the vehicle. This witness has also made general statement that the accused persons assaulted but his statement is not clear as to whom the accused persons assaulted and who is the real person caused injury. Version of this witness is also general and bald statement which is not pointing specifically in any of the respondent. Constable Gajendra Pal (PW-6) also made general statement that the accused persons assaulted him and broken the glass of the vehicle but version of this witness is also not clear as to who really assaulted him and broke the glass of the vehicle. Constable Indrabhan (PW-8) deposed before the trial Court that he is not aware of the fact between whom the scuffle took place. This witness deposed before the trial Court that he could not remember who assaulted him.

4. Taking into consideration the overall assessment of the evidence, the finding recorded by the trial Court is based on evaluation of the evidence. The view taken by the trial Court is

one of the plausible view which is based on relevant material placed on record. It is settled law that if two views are possible, the view in favour of the accused should be preferred.

5. After reassessing the entire evidence, this Court has no reason to record a contrary finding. Accordingly, the appeal is liable to be and is hereby dismissed.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**