

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 22/11/2019

Delivered on 06 /01/2020

CRA No. 664 of 2007

1. Bhukhan @ Bhupendra, Aged about 24 years, S/o- Bhuneshwar Jaiswal.
2. Leelaram, S/o- Niranjana Prasad Sonkar, Aged about- 39 years.
3. Mohan Lal @ Manmohan, S/o- Narayan @ Harnarayan Sonkar, Aged about- 20 years.
4. Niranjana Prasad, S/o- Tirith Ram Sonkar, Aged about- 68 years.
5. Holi Ram, S/o- Niranjana Prasad Sonkar, Aged about- 32 years.
6. Likeswar@ Likesh, S/o- Nand Kumar Sonkar, Aged about- 23 years.
7. Khumesh, S/o- Gyan Singh Sonkar, Aged about- 19 years.
8. Narayan @ Harnarayan, S/o- Kalam Prasad Sonkar, Aged about- 40 years.
9. Gyan Singh, S/o- Niranjana Prasad Sonkar, aged about- 34
10. Tameshwar, S/o- Dileshwar jaiswal, Aged about- 20 years.
11. Bhuneshwar, S/o- Ram Dulari Jaiswal, Aged about- 48 years.
12. Vijay Kumar, S/o- Niranjana Prasad Sonkar, Aged about- 44 years.
13. Ram manohar @ Manohar, s/o- Kalam Prasad Sonkar, Aged about- 38 years.

All R/o- Village Thakurikapa, Thana- jarhagaon District-
Bilaspur(C.G.) **---- Appellants**

Versus

State of Chhattisgarh, through the District Magistrate, Bilaspur
(C.G.) **---- Respondent**

For appellants : Mrs. Meenu Banerjee, Advocate
For State : Mr. Raghvendra Verma, G.A.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment dated 4th July, 2007 passed by Special Sessions Judge constituted under Scheduled Caste/Scheduled Tribe (Prevention of Atrocity) Act 1989, Bilaspur (C.G.), in Special Sessions Trial No. 103/2003 wherein the said Court convicted all the appellants for charge

under Sections 147, 323 read with Section 149, 325 read with Section 149 of Indian Penal Code, 1860 and sentenced them to undergo R.I. for 1-1 year and fine of Rs. 500-500/-, R.I. for 6-6 months and fine of Rs. 500-500/-, R.I. for 2-2 years and fine of Rs. 1000-1000/- respectively with default stipulations. All the sentences to run concurrently.

2. As per version of the prosecution, on 3rd April, 2003 in the night at about 10.30 Hrs. the appellants with common intention of rioting unlawfully assembled at village Thakurikapa, Police Station Jarhagaon to cause injuries to Awadhram and his wife Roopa Bai and son Annu @ Anardas. The other allegations were also made but appellants were acquitted of the said charge. The appellants were charge-sheeted and convicted as mentioned above.

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

(i) The trial Court has not evaluated the evidence that at the time of incident there was a dark night and during darkness the persons could not be identified.

(ii) Anardas (PW-6) deposed before the trial Court that he identified only 3 persons.

(iii) The trial Court recorded finding that Awadh Ram sustained injuries on finger but it is not established as to who really caused blow on his finger.

(iv) The appellant received injuries by assault of complainant party but same is overlooked by the trial Court.

(v) The trial Court over looked the material contradiction and omission in the statement of prosecution witnesses.

(vi) The omnibus allegations is not sufficient evidence to prove allegations, therefore order passed by 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. From the evidence of Mohan Das Kosle (PW-1). It is established that appellants assaulted Awadh Ram, Anardas and Roopa Bai. Version of this witness is supported by version of Roopa (PW-2). Mana Bai (PW-3), Shiv Kumari (PW-4), Awadh Ram (PW-5) and Anardas (PW-6). All these witnesses have been subjected to searching cross examination but nothing is elicited in favour of the defence. Version of these witnesses is supported by version of Dr. Vibha Sindoor (PW-10) who examined Roopa Bai, Awadh Ram and Annu@ Anardas and notice simple injury caused within 24 hours on the body of Roopa Bai and her son Annu. This witness referred Awadh Ram for X-Ray and as per report of Dr. R. Jitpure (PW-13) there was fracture in fifth metacarpal bone of right hand of Awadh Ram. Causing fracture is grievous injury defined under Section 320 of IPC and same is punishable under Section 325 of IPC and offence for causing simple injury as all the appellants have made un-lawful assembly for

causing injury. Their act falls within mischief of under Section 147 of IPC.

6. The trial Court convicted all the appellants for the said offence and this Court has no reason to record contrary view. Commission of said offence by the appellants is hereby affirmed.
7. Jail sentence is not compulsory for offence under Section 147 and 323 of IPC. The appellants have suffered jail term of 5 days and 4 days their jail sentence awarded by the trial Court is reduced to the period already undergone by them. However, fine amount imposed by the trial Court shall remain intact.
8. With this modification, the appeal is partly allowed.

Sd/-

(Ram Prasanna Sharma)
Judge