
(1978) 10 RAJ CK 0005

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 654 of 1973

Heerachand and Jayantilal

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 27-10-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 147, 323, 452

Citation : (1978) WLN 401

Hon'ble Judges : M.L. Joshi, Acting C.J.

Bench : Single Bench

Judgement

M.L. Joshi, Actg. C.J.

1. This revision petition u/s 439 of the Code of Criminal Procedure, is directed against the judgment of the learned Sessions Judge, Pali, dated September 20, 1973, passed in Criminal Appeal No. 56 of 1972, whereby he held the petitioners guilty u/s 323 I.P.C. and released them after due admonition.

2. The charge against the accused-petitioners was that they, on May 24, 1968, at about 8 a.m, in pursuance of the common object of the unlawful assembly, consisting of the 5 accused persons, they entered in the house of Magraj and committed the offence of rioting, which was punishable u/s 147 I.P.C. The second charge against both the petitioners was that on May 24, 1968, at about 8 a.m., they having in pursuance of common object of unlawful assembly prepared themselves for giving beating to Magh Raj, entered into the house of Magh Raj and thus committed offence which was punishable u/s 452 I.P.C. The learned Magistrate convicted the two petitioners besides three more persons Under Sections 147 and 452 I.P.C. The accused persons, being aggrieved by the order of the learned Magistrate, went before the learned Sessions Judge by way of appeal. The learned Sessions Judge partly allowed the appeal. He, by his judgment under appeal, acquitted all the accused persons under offences Under Sections 147 and 452 I.P.C. He, however convicted Heera Chand and Jay and Lal, the

petitioners before me, u/s 323 I.P.C for administering beating to Chhagan Lal in the morning of May 24, 1968. He, instead of passing any such substantive sentence, let them off by administering due admonition. It is against this judgment of the learned Sessions Judge, the petitioners have come by way of revision before this Court.

3. The short point canvassed before me by the learned Counsel for the petitioners is that despite the fact that all the accused including the petitioners have been acquitted of both the charges levelled against them, the petitioners have been convicted u/s 323 I.P.C. although there was no charge in that behalf. It may be pointed out that the learned Sessions Judge himself, to quote his own words, observed, "We feel very doubt about the occurrence that is said to have occurred at the house of Magh Raj and the benefit must go to the accused. But we are convinced that Heerachand and Jayantilal both beat Ctihaganlal in the morning and his statement is supported by Nainsingh." It is rather curious that in the absence of a charge (kindly turn over to p. 3) the learned Sessions Judge has chosen to convict the accused petitioners u/s 323 I.P.C. He had acquitted all the accused parsons including the petitioners Under Sections 147 and 452 I.P.C which were the only charges levelled against them. There was no separate charge u/s 323 I.P.C. In the absence of charge, the learned Sissions Judge could not have convicted the accused petitioners u/s 323 I.P.C. as it would seriously prejudice the petitioners. It is veil settled that before a person is convicted under a particular offense, he should be informed of the accusation in that behalf by way of a formal charge sheet. In the case before me, there is neither any formal charge u/s 323 I.P.C. nor that charge can be spelled out from the accusation levelled against the petitioners The order of the learned Sessions Judge convicting the accused persons u/s 323 I.P.C. is therefore obviously improper and cannot be allowed to stand.

4. In the result, the revision petition is accepted, the order of conviction passed by the learned Sessions Judge u/s 323 I.P.C. against the petitioners is set aside and they are acquitted of the offence u/s 323 I.P.C.